Supreme Court, U. S.
FILED
SEP 25 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-4391

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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In the Supreme Court
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OCTOBER TERM, 1976

No.

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

Petitioners, the People of the Territory of Guam, respectfully pray this Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit (hereafter Ninth Circuit), entered in cause number 76-1557 on August 31, 1976 which reversed the judgment of the District Court of Guam (hereafter District Court).

OPINION BELOW

The opinion of the Ninth Circuit issued on August 10, 1976 (Mandate and Judgment entered on August

31, 1976) has not been officially reported. A copy of said opinion has been appended hereto at page A-1. The Judgment of conviction against Respondent was entered in the Superior Court of Guam on the 28th day of October, 1975. Notice of Appeal was filed with the District Court of Guam, Appellate Division, on the 28th day of October, 1975. The Order of the District Court of Guam, neither officially or unofficially published, dismissing the appeal for lack of jurisdiction was entered on the 9th day of March 1976. Said Order of the District Court of Guam is appended hereto at page A-5.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1) and Rule 19(1)(b) of the Rules of this Court, to review an opinion of the Ninth Circuit which has rendered a decision which has decided an important territorial question in a manner to conflict with territorial law by declaring said law contrary to the Organic Act of Guam (48 U.S.C. 1421, et seq.) and in a manner which conflicts with a previous ruling of this Court. (P.L. (Guam) 12-85, appended at A-8.

The judgment of the Ninth Circuit was entered on August 31, 1976. This Petition is timely in that it is filed prior to the expiration of the thirty (30) day period allowed by Rule 22(2) of this Court.

QUESTION PRESENTED FOR REVIEW

1. Whether the Organic Act of Guam, Section 22 (48 U.S.C. §1424) permits the Territory of Guam sufficient powers of self-government so as to allow its Legislature to create an appellate court separate from the District Court of Guam to which all appeals from the Superior Court, created also by the Legislature of Guam, are to be directed. (P.L. 12-85 (Guam))

ORGANIC ACT (FEDERAL LAW) PROVISIONS INVOLVED

Federal law interpreted by the Ninth Circuit contrary to the laws of Guam is Section 22 (48 U.S.C. §1424) which states, in pertinent part:

> "Section 22. (a) There is hereby created a court of record to be designated the "District Court of Guam", and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam shall have the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. The jurisdiction of and the procedure in the courts of Guam other than the Dis-

trict Court of Guam shall be prescribed by the laws of Guam.

"Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 24(a) of this Act. The concurrence of two judges shall be necessary to any decision by the District Court of Guam on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute in accordance with the applicable law or rules or procedure."

STATEMENT OF THE CASE

This Petition arises from a reversal of and remand to the District Court of Guam of its Order of Dismissal in the case of *The People of the Territory of Guam v. Edmund J. Olsen,* Criminal Case No. 84F-75 whereby the Ninth Circuit determined that the legislature of Guam lacked the power to create a Supreme Court of Guam, to which court the Respondent, Olsen, had also appealed. In such a ruling the Ninth

Circuit, while sitting *en banc* and by a vote of seven judges to four, overruled a previous ruling of a panel of that court in the case of *Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam,* No. 75-1059 (529 F.2d 952) which had ruled upon the identical issue, but in a manner upholding the laws of Guam. No issue pertaining to the respondent's criminal conviction is raised either by the appeal to the Ninth Circuit or by this Petition. Jurisdiction of the 9th Circuit is by 28 U.S.C. 1291.

Facts Material to the Consideration of the Question Presented

A concise history of the courts of Guam under the Organic Act is contained in the Opinion of the Ninth Circuit in *Agana, Bay Dev. Co. (Hong Kong) Ltd. v. Supreme Court of Guam,* 529 F.2d 952, 955.

Following the decision of the Ninth Circuit in *Agana Bay,* the real parties in interest settled the merits of the case and no Petition to this Court ensued. During the period of time *Agana Bay* was on appeal, the Respondent herein, Olsen, was convicted of criminal charges in the Superior Court of Guam. Due to the uncertainty of the outcome in *Agana Bay,* an appeal from his conviction was filed in both the Supreme Court of Guam and in the Appellate Division of the District Court of Guam. Upon the reversal of the District Court of Guam in the *Agana Bay* case, the District Court dismissed the appeal upon the authority of *Agana Bay.*

An appeal was timely taken to the Ninth Circuit by Respondent. Before the Ninth Circuit could hear

the matter, a Petition for Writ of Certiorari was entered by Respondent, which Petition was denied. Following denial, the Ninth Circuit ordered a hearing *en banc without further briefs or arguments.* Initially, both parties had relied upon the majority and dissent in the case of *Agana Bay.* The Ninth Circuit, *en banc,* reversed its holding in *Agana Bay,* and determined that Guam does not possess the power to create an Appellate Court, but can only limit or enlarge the appellate powers of the District Court.

From that *en banc* decision, this Petition comes.

REASONS FOR ALLOWANCE OF THE WRIT

I

THE LANGUAGE OF THE ORGANIC ACT AND ITS HISTORY GIVES THE LEGISLATURE OF GUAM THE POWER TO PLACE APPELLATE POWERS OF GUAM IN THE DISTRICT COURT OR IN AN APPELLATE COURT CREATED BY THE LEGISLATURE

The Organic Act of Guam, unlike the Organic Acts of the Virgin Islands or (formerly) Puerto Rico, Hawaii and Alaska, creates both a federal *District Court of Guam* and "such court or courts" established by the laws of Guam and gives to both types of courts the full "judicial authority of Guam." In addition, the District Court of Guam is given exclusive federal jurisdiction and exclusive jurisdiction over matters involving the territorial income tax. (48 U.S.C. §1424 [para. 1] and §1421i(h)(5)). Therefore, any locally created court, to the extent of the jurisdiction given

it by the territorial legislature, partakes equally of the same judicial authority of Guam as does the District Court of Guam.

> The local jurisdiction of the District Court is:
>
> "in all other [non-federal] causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, *and shall have such appellate jurisdiction as the legislature may determine.*" [emphasis mine] 48 U.S.C. §1424, para. 1

Pursuant to this authority, the First Guam Legislature created the Appellate Division of the District Court by (Guam) Public Law 77.

In 1958, Congress passed P.L. 85-444, §21 (72 Stat. 179, codified as 48 U.S.C. §1424(a) as amended) which had the purpose, as stated by the Ninth Circuit, as:

> "Thus, instead of purporting to create a new appellate body, Congress . . . was only formalizing the procedural means by which the District Court should exercise its theretofore existing appellate jurisdiction, jurisdiction which antedated the amendment to 28 U.S.C. §1291. 'Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, . . .' *Corn v. Guam Coral Co.,* 318 F.2d 622 (1963).

This amended section did not delete or otherwise alter the first paragraph which provided for the basic jurisdiction of the courts of Guam, which remains intact to this day. As the Ninth Circuit previously stated, all the 1958 amendment did was to provide a

procedure for the District Court, a task which was beyond the powers of the local legislature.

Therefore, the Ninth Circuit erred when it determined that Guam did not possess the power to create its own Supreme Court, since nowhere does the Organic Act of Guam invest *exclusive* jurisdiction over appellate matters with the District Court of Guam, but only provides the means by which such jurisdiction it may have may be procedurally exercised.

II

THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, BY USING COMPARABLE LANGUAGE TO THE ORGANIC ACT OF GUAM, HAS SPECIFICALLY PERMITTED THE COMMONWEALTH TO CREATE ITS OWN APPELLATE STRUCTURE OR USE THE APPELLATE DIVISION OF THE DISTRICT COURT

Article IV of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" (Public Law 94-241, 90 Stat. 263), creates a District Court of the Northern Mariana Islands having equivalent federal jurisdiction of the District Court of Guam, and local jurisdiction "over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands." (90 Stat. 263, 266) Further, this District Court "will have such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide." (90 Stat. 263, 267)

An Official History of the "Covenant", signed by the parties who negotiated it, but not made a part of the Public Law above referred, states, with reference to the appellate powers of the District Court of the Northern Mariana Islands:

> "Subsection 402(c). It is the intention of the parties with respect to this Subsection that the Legislature of the Northern Mariana Islands be under no obligation to grant any appellate jurisdiction to the District Court for the Northern Mariana Islands. The Legislature may choose at any time and from time to time to establish appellate courts of the Northern Mariana Islands and to eliminate or reinstate the appellate jurisdiction of the District Court." (*History,* at [page 3]; Appended hereto at page A-7).

Of course, Congress, through the Covenant also provided for appeals to an Article III court from the local appellate court, if and when created. This has not been done on Guam, but no hindrance exists for such legislation, and in fact, such has been introduced (H.R. 4580, Mar. 1975).

While the Covenant did not become law until March 24, 1976, it shows that the Ninth Circuit did commit error when it found that the intent of Congress using the language of the Organic Act was to prohibit the Legislature of Guam from creating its own appellate court, and also divesting the District Court of its jurisdiction. It cannot be said that Congress, and the signers of the Covenant intended the same language to be used in one instance to permit the formation of a locally-created Supreme Court (of

the Northern Marianas) and in another instance (Guam) prohibit the same act. Thus, the Ninth Circuit's decision required review by this Court to settle the intent of this language.

III

THIS COURT HAS PREVIOUSLY HELD THAT, IN SIMILAR CIRCUMSTANCES, LANGUAGE SIMILAR TO THAT OF THE ORGANIC ACT OF GUAM DOES NOT REQUIRE A FINDING OF EXCLUSIVE JURISDICTION

In the case of *The American Ocean Ins. Co.'s v. 356 Bales of Cotton,* 1 Peters 511, 7 L.Ed. 242, this Court upheld the power of the Florida Territorial Legislature to bestow Admiralty jurisdiction on a territorial court in Key West, Florida despite the fact that the Organic Act of Florida gave to the Congressionally-created Superior Court "the same jurisdiction" as was given to the court of Kentucky District, which latter court did have exclusive Admiralty jurisdiction. (Supra, 7 L.Ed. at 255.)

Florida's Organic act provided even less latitude in creating local courts than does the Organic Act of Guam since the Florida Legislature could create *only* "inferior" courts (to the Superior Courts). Chief Justice Marshall, in delivering the Opinion, found that the grant of "judicial power of the territory" was made equally to the Superior Courts and to the Inferior courts, and jurisdiction was concurrent, except where specifically made exclusive (7 L.Ed., at 256). The Chief Justice also points out that, even though Admiralty jurisdiction is an exclusive federal function in a state, Congress had full power under

Article IV of the Constitution to empower a Territory to create its own courts with any jurisdiction allowed it by Congress.

The same situation exists for Guam, except that the Organic Act of Guam does not limit the legislatively-created courts to "inferior" courts, and provides that the District Court of Guam has exclusive jurisdiction only in matters which "arise under the Constitution, treaties, and laws of the United States, . . ." (48 U.S.C. 1424), or which concern the Territorial Income Tax (48 U.S.C. 1421i(h)(5)). Nowhere is the appellate jurisdiction made exclusive in the District Court of Guam, Appellate Division. Rather, what appellate jurisdiction as does exist in that court is to be "as the legislature [of Guam] may determine" (48 U.S.C. 1424).

As shown in previous argument, the second paragraph of 48 U.S.C. §1424 was added to provide for procedure to govern appeals to the Appellate Division of the District Court, since the Legislature of Guam cannot prescribe the procedure for the District Court, even though it is permitted to determine its appellate jurisdiction.

As in the Florida Territory, the second paragraph of 48 U.S.C. 1424 does not give exclusive jurisdiction to the District Court over appellate matters. Not only does it not specifically grant jurisdiction, as that is done in the first paragraph of the Section, it does not state that the only appeals available on Guam are in the District Court or are to be governed by its procedure. Rather, that paragraph only prescribes the

procedure in the District Court, a matter which the laws of Guam cannot provide. And, the procedure is to be used with *only* those appeals which are heard in the District Court.

Therefore, the Ninth Circuit erred in that it interpreted the second paragraph as giving exclusive jurisdiction over all appeals in Guam to the District Court.

CONCLUSION

Therefore, because the decision of the Ninth Circuit is in error, and because this issue is of great significance in determining the degree of self-government permitted to the Territory of Guam, and because a previous ruling of this Court granted powers similar to those sought by Guam to a Territory of the United States under laws worded in a similar fashion to the Organic Act of Guam, a writ of ceritorari should be issued to review the judgment and order of the Ninth Circuit.

Respectfully submitted,

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September 22, 1976

(Appendix Follows)

APPENDIX

Appendix

United States Court of Appeals
for the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

(August 10, 1976)

Appeal for the United States District Court
for the District of Guam

OPINION

Before: BROWNING, DUNIWAY, ELY, HUFSTEDLER, WRIGHT, TRASK, CHOY, GOODWIN, WALLACE, SNEED, and KENNEDY, Circuit Judges.

PER CURIAM:

In Agana Bay Development Co., v. Supreme Court of Guam, 529 F.2d 952 (9th Cir. 1976) a divided panel of this court held that the Organic Act of Guam, 64 Stat. 384 (1950), authorized the territory to enact its Court Reorganization Act, by which it

transferred the appellate jurisdiction of the district court to the newly created Supreme Court of Guam. The record in that case shows that it was settled after our opinion issued; no petition for certiorari was filed with the Supreme Court of the United States.

Appellant in the present case was convicted of criminal charges in the Superior Court of Guam. He appealed to the United States District Court for the Territory of Guam [sic] and that court dismissed the appeal on the authority of *Agana Bay*. Appellant then petitioned for a writ of certiorari to the Supreme Court of the United States before the case was heard in our court; the petition was denied. We ordered the case submitted to the court en banc so that the question presented in *Agana Bay* could be resolved by the full court.

We now hold that the provisions of Guam's Court Reorganization Act transferring the appellate jurisdiction of the district court to a territorial court are not authorized by the Organic Act. We therefore overrule the panel's opinion in *Agana Bay Development Co. v. Supreme Court of Guam*. In so holding we adopt the analysis of the dissenting opinion in *Agana Bay*. We find particularly applicable to this case that portion of the *Agana Bay* dissent which points out that litigation in the territorial court may involve substantial federal questions which cannot be reviewed by the United States Supreme Court or by any other article III court under existing statutes. See 529 F.2d at 960-61, n.3.

We recognize that Guam's Court Reorganization Act was drawn to give expression to a strong desire by the territorial legislature for a greater degree of autonomy and self-government for Guam, and our ruling should not be construed as critical of that objective. We hold only that the appellate jurisdiction of the district court may not be transferred without congressional authorization and pursuant to such provisions and safeguards as Congress may provide.

The ruling of the district court declining appellate review in this case is reversed and the cause remanded.

GOODWIN, Circuit Judge, with whom Judges Duniway, Trask and Wallace join, dissenting:

I dissent, for the reasons set out by Judge Carter in Agana Bay Development Co. v. Supreme Court of Guam, 529 F.2d 952 (9th Cir. 1976).

MEMORANDUM OF CIRCUIT JUDGE CHAMBERS:

On June 9, 1976, I participated in the vote of the active judges of the court to take this case en banc.

On June 13, 1976, I received notice that the Chief Justice of the United States was appointing me as chairman of a newly created committee of the Judicial Conference of the United States on the Pacific Territories.

On July 8, the Chief Justice completed the committee by adding thereto our Circuit Judges Ely and Choy and Judge Paul D. Shriver (retired United States district judge for the Territory of Guam) of

Denver, Colorado, and Charles H. Habernigg (former Attorney General of American Samoa), of Portland, Oregon.

In the interim between my appointment and the appointment of Judges Ely and Choy to the committee, the latter two cast their votes for the view expressed by Judge Kennedy. Judge Ely voted on June 24 and Judge Choy on June 28. I did not vote because it seemed that I should not wear a judicial hat and a semi-legislative or policy hat at the same time, although I do not consider myself disqualified.

On the other hand, it seems proper that the votes of Judges Ely and Choy should be counted because their official positions on the committee were created after they had voted.

In the District Court of Guam
Appellate Division

Undocketed

The People of the Territory of Guam,
Plaintiff-Appellee,

vs.

Edmund J. Olsen,
Defendant-Appellant.

(Filed March 9, 1976)

ORDER

On authority of *Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam, No. 75-1059* (9th Cir., Jan. 14, 1976),

IT IS ORDERED that this Appeal be and the same hereby is dismissed for lack of jurisdiction.

Dated at Agana, Guam this 9th day of March, 1976.

/s/ CRISTOBAL C. DUENAS
CRISTOBAL C. DUENAS, JUDGE
DISTRICT COURT OF GUAM

HISTORY

Memorandum For:

The Chairman, Marianas Political Status Commission

The President's Personal Representative for Micronesian Status Negotiations

Subject:

Report of the Joint Drafting Committee on the Negotiating History

Pursuant to decisions taken in December during the fifth series of negotiations in Saipan on the future political status of the Marianas, the joint Marianas-United States Drafting Committee has met and has undertaken to record the intention of the parties regarding certain provisions of the Covenant. We submit our report herewith.

The results of our discussions are reflected in the attached draft negotiating history which is recommended by the Joint Drafting Committee for your consideration. The draft serves to set out our tentative agreement on a number of substantive matters. We recommend that it be approved by both delegations and incorporated into the official record.

/s/ HOWARD P. WILLENS
COUNSEL
MARIANAS POLITICAL
STATUS COMMISSION

/s/ JAMES M. WILSON, JR.
UNITED STATES
DEPUTY REPRESENTATIVE

Approved by the delegation of the Northern Mariana Islands and the United States on Feb. fifteenth, 1975.

/s/ EDWARD DLG. PANGELINAN
EDWARD DLG. PANGELINAN
CHAIRMAN
MARIANAS POLITICAL STATUS COMMISSION

/s/ F. HAYDN WILLIAMS
AMBASSADOR F. HAYDN WILLIAMS
THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS.

[page 3]

Section 401. **The establishment of a district court for the Northern Mariana Islands does not preclude the appointment of the District Judge, United States Attorney and United States Marshal for Guam to hold the corresponding offices in the Northern Mariana Islands at the same time. The United States Congress, in its discretion, may also provide that the United States Attorney and the United States Marshal for the Northern Mariana Islands are authorized and required to perform, at the request of the Government of the Northern Mariana Islands, certain functions related to the execution of the local laws.**

Subsection 402(c). **It is the intention of the parties with respect to this Subsection that the Legislature of the Northern Mariana Islands be under no obligation to grant any appellate jurisdiction to the District Court for the Northern Mariana Islands. The Legislature may choose at any time and from time to time to establish appellate courts of the Northern Mariana Islands and to eliminate or reinstate the appellate jurisdiction of the District Court.**

Subsection 501(a). **. . . .**

PERTINENT PARTS OF PUBLIC LAW 12-85
GUAM'S "COURT REORGANIZATION ACT"

Be It Enacted by the People of the Territory of Guam:

Section 1. This Act may be cited as the "Court Reorganization Act".

Section 2. Section 51 of Chapter I, Title I, Part I of the Code of Civil Procedure is hereby repealed and a new Section 51 is enacted in lieu thereof to read as follows:

"Section 51. Courts of justice in general. The Courts of justice of the territory of Guam consist of the Supreme Court and the Superior Court. The Judicial Council shall by rules of Court create such divisions of the Superior Court as within its judgment may be desirable and may designate which of such divisions shall be courts of record and which shall be courts not of record, provided however, that two (2) of such divisions shall be the Juvenile Court Division, a court of record, and the Traffic Court Division, a court not of record."

Section 3. Chapter II of Title I, Part I of the Code of Civil Procedure is hereby repealed and a new Chapter II is enacted in lieu thereof to read as follows:

"Chapter II

Supreme Court

Section 61. Composition of court. The Supreme Court shall be presided over by the Chief Justice of Guam and two (2) associate justices, all of whom shall be appointed by the *Legislature* for a term of eight (8) years each, unless sooner

removed for cause. The *Legislature* shall appoint each justice from among judges of the District Court of Guam, the Superior Court judges and three (3) additional persons who are admitted to the Guam Bar and who have practiced law in Guam for at least six (6) months who shall be nominated and whose names shall be submitted to the Legislature by the Judicial Council. . . .

(b) Disqualification or inability of the Chief Justice to act. In cases in which the Chief Justice is disqualified or unable to act, he shall designate any associate justice to sit in his place.

(c) The concurrence of two (2) justices shall be necessary to any decision of the Supreme Court on the merits of an appeal, but the Chief Justice alone, or an associate justice sitting in his place alone, may take any appropriate orders with respect to an appeal and dismiss an appeal for want of jurisdiction, or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

Section 62. Jurisdiction. The Supreme Court shall have jurisdiction of appeals from the judgments, orders, and decrees of the Superior Court in criminal cases as provided in the Penal Code, Part II, Title VIII, and in civil cases . . . .

The Supreme Court shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have the power to issue writs of habeas corpus upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court or before

the Superior Court or any division of the Superior Court or before any judge thereof.

Section 63. Powers on appeal. Upon appeal, the Supreme Court may affirm, modify, vacate, set aside or reverse the judgment, order or decree appealed from, and remand the cause and direct the entry of such appropriate judgment, order or decree as may be just under the circumstances, but the Supreme Court may not take new or additional evidence, consider the issues of fact de novo, or set aside findings of fact made by the Superior Court unless they are clearly erroneous, and due regard shall be given to the opportunity of the trial judge to judge the credibility of the witnesses.

Section 65. Pending appeals. All actions and proceedings arising under the laws of Guam pending in the Appellate Division of the District Court of Guam upon the effective date of this Act shall be prosecuted to final determination in that court as though this Act had not been passed. All appeals pending before the United States Court of Appeals for the Ninth Circuit shall remain in said court and the District Court of Guam shall retain jurisdiction to enter such orders, decrees and judgments and conduct any appropriate proceedings in accordance with the ultimate mandates issued on any such pending appeals.

Section 5. Section 82, Chapter III, Title I, Part I of the Code of Civil Procedure is hereby repealed and a new Section 82 is enacted in lieu thereof to read as follows:

Section 82. Original jurisdiction. The Superior Court shall have original jurisdiction in all cases

arising under the laws of Guam, civil or criminal, in law or equity, regardless of the amount in controversy, except for causes arising under the Constitution, treaties, laws of the United States and any matter involving the Guam Territorial Income Tax."

[The remainder of the Act, as it related to the Supreme Court amends various laws of Guam to refer to the Supreme Court of Guam as the appellate court, instead of the Appellate Division of the District Court, as had been the law prior to the enactment of this Act.]

[By Public Law 12-85, appointment of the judges of both the Superior and Supreme Courts vests in the Governor of Guam, by and with the advice and consent of the Legislature.]

PERTINENT PARTS OF PART I, TITLE I, GUAM'S CODE OF CIVIL PROCEDURE WHICH WERE REPEALED BY THE "COURT REORGANIZATION ACT"

"Chapter II

District Court

Sec. 62. Original Jurisdiction. Under 22(a) of the Organic Act of Guam [48 U.S.C. 1424] the District Court of Guam has the original jurisdiction of a district court of the United States and has original jurisdiction in all other cases in Guam except those over which original jurisdiction has been transferred to and vested in the Island Court by §82 of this Title. If it appears that an action or proceeding brought in

the District Court is actually within the jurisdiction of the Island Court, the District Court shall transfer it to the Island Court for hearing and determination.

Sec. 62a. In the absence of the Judge of the District Court of Guam or his inability to serve, the Island Court through its Chief Justice shall have original jurisdiction in pleas of guilty, defaults and matters preliminary to trial in all causes where original jurisdiction is given to the District Court except in causes arising under the laws of the United States.

Sec. 63. Appellate jurisdiction. The District Court of Guam shall have jurisdiction of appeals from the judgments, orders and decrees of the Island Court in criminal causes as provided in the Penal Code, Part II, Title VIII, and in civil causes . . .

Sec. 64. Powers on appeal. Upon appeal the District Court may affirm, modify, . . .

Sec. 65. Appellate Division. Appeals from the Island Court shall be heard and determined by an appellate division of the District Court consisting of three (3) judges, of whom two (2) shall constitute a quorum. The appellate division when requested by the moving party, shall also hear and determine motions for rehearing or a new trial made after final decision of the District Court in all cases tried originally in that court in which such final decision is not appealable to the United States Court of Appeals for the Ninth Circuit. The judge appointed by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified

or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time by the Chief Justice of the United States pursuant to §24(a) of the Organic Act of Guam [48 U.S.C.A. 1424b]. The concurrence of two judges of the appellate division shall be necessary to any decision by the District Court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

Sec. 68. The District Court of Guam may from time to time prescribe rules, consistent with law and with the rules adopted by the Supreme Court (of the U.S.) and by the Judicial Council, for the conduct of its business, and may issue writs of habeas corpus, certiorari or review, mandamus or mandate, prohibition and all other writs necessary or appropriate in aid of its original or appellate jurisdiction and agreeable to the usages and principles or law.

Sec. 69. Pending appeals. All records, books, papers, causes, appeals and proceedings lodged, deposited or pending in the former Court of Appeals are transferred to the District Court of Guam which shall have the same jurisdiction over them as if they had been in the first instance lodged, deposited, filed or commenced therein. [Enacted 1953].

Supreme Court, U. S.
FILED
DEC 30 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court
OF THE
United States

OCTOBER TERM 1976

No. 76-439

TERRITORY OF GUAM,
Petitioner,

vs.

EDMUND J. OLSEN,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Petition for Certiorari Filed September 22, 1976
Writ of Certiorari Granted November 15, 1976

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In the Superior Court of Guam

Criminal Case No. 84F-75

The People of the Territory of Guam,
Plaintiff,
vs.
Edmund J. Olsen,
Defendant.

[Filed, Superior Court of Guam, Oct. 28, 1975]
[Filed, District Court of Guam, Oct. 29, 1975]

NOTICE OF APPEAL

Notice is hereby given that defendant hereby appeals to the District Court of Guam and to the Supreme Court of Guam and to each of them from the final judgment entered in this proceeding on the 28th day of October, 1975.

Dated at Agana, Guam, this 28th day of October, 1975.

/s/ Edmund J. Olsen
Edmund J. Olsen

In the District Court of Guam
Appellate Division

Undocketed

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

(Filed March 9, 1976)

ORDER

On authority of *Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam, No. 75-1059* (9th Cir., Jan. 14, 1976),

IT IS ORDERED that this Appeal be and the same hereby is dismissed for lack of jurisdiction.

Dated at Agana, Guam this 9th day of March, 1976.

/s/ CRISTOBAL C. DUENAS
CRISTOBAL C. DUENAS, JUDGE
DISTRICT COURT OF GUAM

In the District Court of Guam
Appellate Division

Undocketed

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

[Filed Mar. 10, 1976]

NOTICE OF APPEAL

Notice is hereby given that Edmund J. Olsen, defendant-appellant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of dismissal entered in this appeal on the 9th day of March, 1976.

Trapp, Gayle, Teker,
Hammer & Lacy,
A professional corporation,

/s/ Howard Trapp
Through
A licensed employee,
Attorneys for defendant-appellant

United States Court of Appeals
For the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

On Appeal from the District Court of Guam

SUGGESTION OF APPROPRIATENESS OF HEARING IN BANC

Trapp, Gayle, Teker,
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Post Office Box 3367,
Agana, Guam 96910,
Attorneys for
Defendant-Appellant.

Table of Authorities Cited

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United States Court of Appeals
For the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

On Appeal from the District Court of Guam

SUGGESTION OF APPROPRIATENESS OF HEARING IN BANC

Comes now, Edmund J. Olsen, defendant-appellant, appearing by and through his attorneys Trapp, Gayle, Teker, Hammer & Lacy, and makes this suggestion that the Court hear the within entitled appeal in banc. This suggestion is made pursuant to Rule 35 of the Federal Rules of Appellate Procedure and upon the ground and for the reason that the proceeding herein involves a question of exceptional importance.

The issue presented by this appeal is whether the Guam Legislature acted within its authority under the Organic Act in enacting the Court Reorganization Act, Guam Public Law 12-85 (January 16, 1974), which purports to strip the District Court of Guam of its appellate jurisdiction except for those cases

arising under federal law or involving the territorial income tax. This same legislation created the Supreme Court of Guam and conferred upon that court all remaining appellate jurisdiction. Because no appellate review beyond the Supreme Court of Guam is permitted by law, an additional issue is presented as to whether or not Congress authorized the Guam Legislature to eliminate appellate review by the Federal court system under the language of the Organic Act.[3]

The issues thus drawn were previously considered by three circuit judges of this court in the case of *Agana Bay Development Company (Hong Kong) Ltd. v. Supreme Court of Guam,* No. 75-1059 (9th Cir., Jan. 14, 1976). The majority in that case concluded the Guam Legislature had acted in conformity with the authority granted to it by Congress under the language of the Organic Act. However, in a strongly reasoned dissent Circuit Judge Kennedy concluded that it was unlikely that Congress intended to give the Guam Legislature authority to so act and that such authority should not be assumed in the absence of express language to that effect. Noting that important Federal issues can be presented in cases which do not "arise under" Federal law the dissent pointed out that there is no provision for appeal beyond the Supreme Court of Guam as created by the Guam Legislature. The dissent compared Guam's judicial system with those established in other territories and concluded that there was no congressional intention to except Guam from Federal appellate review as is provided for in Puerto Rico and

the Virgin Islands. Judge Kennedy noted that Congress in the past provided for review by article III courts of all cases in the former territories of Hawaii and Alaska and went on to conclude that

> "I do not think Congress intended to give Guam, of all its territories, the unchecked power to transfer appellate jurisdiction to its local courts and by the same token to deny review by any article III tribunal."

The dissent also traced legislative history *subsequent to the enactment of the Organic Act in 1950* in support of his conclusion that Congress did not intend such a result:

> "My conclusion that Congress did not intend to authorize such a transfer of jurisdiction is supported by subsequent legislative history. In 1951, Congress amended the Organic Act to expand the Ninth Circuit's appellate jurisdiction to all final decisions of the district court, rather than the limited categories contained in the original section 23. In 1958 Congress added a paragraph to section 22(a) of the Organic Act, giving explicit authorization for the three-judge appellate court procedure that had been implemented by Guam Public Law 17. These amendments indicate a congressional purpose to sanction a prescribed system for federal court review of local court decisions. Every word of the second paragraph of the amended section 22(a) would become superfluous if Guam could remove the appellate jurisdiction of the district court. This pattern of congressional approval and acceptance cannot now be made completely moot by the Court Reorganization Act."

In voicing concern over federal issues that would not be subject to review in the federal court under the Court Reorganization Act, Judge Kennedy went on to observe:

> "Important federal issues can be presented in cases which do not 'arise under' federal law. See 13 C. WRIGHT, A. MILLER, & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3562 (1975). It seems unlikely to me that Congress intended to confer on the territorial legislature the power to eliminate review in the federal court system of all claims raised in the territorial courts."

The majority opinion in *Agana Bay* noted that the right of appellate review is statutory, and not required by the United States Constitution. The destruction of that right, however, hinging as it does here upon a difficult interpretation of what the majority itself describes as an "overstuffed sentence" in section 22 of the Organic Act, should proceed only after full and careful consideration by the court.

It is respectfully submitted that the issues presented by this appeal are of great importance, not only to defendant-appellant but also to the people of Guam, whose right to appellate review is deserving of consideration by the court in banc.

Dated, Agana, Guam,
May 10, 1976.

Respectfully submitted,
TRAPP, GAYLE, TEKER,
HAMMER & LACY,
By PAUL LACY,
Attorneys for
Defendant-Appellant.

United States Court of Appeals
For the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Appellee,
vs.
Edmund J. Olsen,
Appellant.

[Filed June 15, 1976]

Appeal from the United States District Court
for the District of Guam

Before: CHAMBERS, BROWNING, DUNIWAY, ELY, HUFSTEDLER, WRIGHT, TRASK, CHOY, GOODWIN, WALLACE, SNEED, and KENNEDY, Circuit Judges.

Upon the suggestion of a party and the request of a regular active judge, a vote was taken at a regular meeting of the court upon the question of taking the above-entitled case en banc. A majority of the active judges voted, and it is hereby ordered, that this case be submitted forthwith to the court sitting en banc, without oral argument or further briefs.

For the Court:

/s/ Richard H. Chambers
Chief Judge

United States Court of Appeals
for the Ninth Circuit

No. 76-1557

The People of the Territory of Guam,
Plaintiff-Appellee,
vs.
Edmund J. Olsen,
Defendant-Appellant.

(August 10, 1976)

Appeal from the United States District Court
for the District of Guam

OPINION

Before: BROWNING, DUNIWAY, ELY, HUFSTEDLER, WRIGHT, TRASK, CHOY, GOODWIN, WALLACE, SNEED, and KENNEDY, Circuit Judges.

PER CURIAM:

In Agana Bay Development Co., v. Supreme Court of Guam, 529 F.2d 952 (9th Cir. 1976) a divided panel of this court held that the Organic Act of Guam, 64 Stat. 384 (1950), authorized the territory to enact its Court Reorganization Act, by which it transferred the appellate jurisdiction of the district court to the newly created Supreme Court of Guam. The record in that case shows that it was settled

after our opinion issued; no petition for certiorari was filed with the Supreme Court of the United States.

Appellant in the present case was convicted of criminal charges in the Superior Court of Guam. He appealed to the United States District Court for the Territory of Guam [sic] and that court dismissed the appeal on the authority of *Agana Bay*. Appellant then petitioned for a writ of certiorari to the Supreme Court of the United States before the case was heard in our court; the petition was denied. We ordered the case submitted to the court en banc so that the question presented in *Agana Bay* could be resolved by the full court.

We now hold that the provisions of Guam's Court Reorganization Act transferring the appellate jurisdiction of the district court to a territorial court are not authorized by the Organic Act. We therefore overrule the panel's opinion in *Agana Bay Development Co. v. Supreme Court of Guam*. In so holding we adopt the analysis of the dissenting opinion in *Agana Bay*. We find particularly applicable to this case that portion of the *Agana Bay* dissent which points out that litigation in the territorial court may involve substantial federal questions which cannot be reviewed by the United States Supreme Court or by any other article III court under existing statutes. See 529 F.2d at 960-61, n.3.

We recognize that Guam's Court Reorganization Act was drawn to give expression to a strong desire by the territorial legislature for a greater degree of

autonomy and self-government for Guam, and our ruling should not be construed as critical of that objective. We hold only that the appellate jurisdiction of the district court may not be transferred without congressional authorization and pursuant to such provisions and safeguards as Congress may provide.

The ruling of the district court declining appellate review in this case is reversed and the cause remanded.

GOODWIN, Circuit Judge, with whom Judges Duniway, Trask and Wallace join, dissenting:

I dissent, for the reasons set out by Judge Carter in Agana Bay Development Co. v. Supreme Court of Guam, 529 F.2d 952 (9th Cir. 1976).

MEMORANDUM OF CIRCUIT JUDGE CHAMBERS:

On June 9, 1976, I participated in the vote of the active judges of the court to take this case en banc.

On June 13, 1976, I received notice that the Chief Justice of the United States was appointing me as chairman of a newly created committee of the Judicial Conference of the United States on the Pacific Territories.

On July 8, the Chief Justice completed the committee by adding thereto our Circuit Judges Ely and Choy and Judge Paul D. Shriver (retired United States district judge for the Territory of Guam) of Denver, Colorado, and Charles H. Habernigg (former Attorney General of American Samoa), of Portland, Oregon.

In the interim between my appointment and the appointment of Judges Ely and Choy to the committee, the latter two cast their votes for the view expressed by Judge Kennedy. Judge Ely voted on June 24 and Judge Choy on June 28. I did not vote because it seemed that I should not wear a judicial hat and a semi-legislative or policy hat at the same time, although I do not consider myself disqualified.

On the other hand, it seems proper that the votes of Judges Ely and Choy should be counted because their official positions on the committee were created after they had voted.

Supreme Court, U. S.
FILED
DEC 30 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-439

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

BRIEF FOR PETITIONERS THE PEOPLE OF THE TERRITORY OF GUAM

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-439

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR PETITIONERS THE PEOPLE OF THE TERRITORY OF GUAM

CASE BELOW

This case has not yet been officially or unofficially reported in the courts below.

JURISDICTIONAL GROUNDS

This case comes before this court upon the granting of a Writ of Certiorari by this court to the Ninth Circuit Court of Appeals. Jurisdiction of this court is invoked pursuant to 28 USC §1254(1) and Rule 19(1)

(b) of the Rules of this court, to review an opinion of the Ninth Circuit which has rendered a decision deciding an important territorial question in a manner to conflict with territorial law by declaring said law contrary to the Organic Act of Guam (48 USC §1421, et seq.) and in a manner which conflicts with a previous ruling of this court. Jurisdiction lay with the Ninth Circuit Court of Appeals pursuant to 28 USC §1291.

STATUTES INVOLVED

Federal law interpreted by the Ninth Circuit, and upon which the determination of this case rests, is §22 of the Organic Act of Guam (48 USC §1424) which reads, in pertinent part:

> "Section 22. (a) There is hereby created a Court of Record to be designated the 'District Court of Guam', and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam shall have the jurisdiction of a District Court of the United States in all causes arising under the Constitution, treaties and laws of the United States, regardless of the sum or value of the matter in controversy, shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the Legislature to other court or courts established by it, and shall have such appellate jurisdiction as the Legislature may determine. The jurisdiction of and procedure in the courts of Guam other than the

> District Court of Guam shall be prescribed by the laws of Guam."
>
> "Appeals to the District Court of Guam shall be heard and determined by an Appellate Division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the Presiding Judge of the Appellate Division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the Appellate Division at any session shall be designated by the Presiding Judge from among the judges assigned to the court from time to time pursuant to §24(a) of this Act. The concurrence of two judges shall be necessary to any decision by the District Court of Guam on the merits of an appeal but the Presiding Judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute in accordance with the applicable law or rules or procedures."

Also involved, but as an aid to interpretation, is the "Covenant to establish a Commonwealth of the Northern Mariana Islands in political union with the United States of America", Article II §203(d) and Article IV, Sections 402 and 403 (Public Law 94-241; 90 Stat. 265-267), which reads:

> "Article II
>
> Constitution of the Northern Mariana Islands
>
> Section 203(d). The judicial power of the Northern Mariana Islands will be vested in such

courts as the constitution or laws of the Northern Marianas may provide. The constitution or laws of the Northern Mariana Islands may vest in such courts jurisdiction over all causes in the Northern Mariana Islands over which any court established by the Constitution or laws of the United States does not have exclusive jurisdiction."

"Article IV

Judicial Authority

"Section 401. The United States will establish for and within the Northern Mariana Islands a Court of Record to be known as the 'District Court of the Northern Mariana Islands.' The Northern Mariana Islands will constitute a part of the same judicial circuit of the United States as Guam.

Section 402. (a) The District Court for the Northern Mariana Islands will have the jurisdiction of a District Court of the United States, except that in all causes arising under the constitution, treaties or laws of the United States it will have jurisdiction regardless of the sum or value of the matter in controversy.

(b) The District Court will have original jurisdiction in all causes in the Northern Mariana Islands nor described in subsection (a) jurisdiction which is not vested by the constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. In causes brought in the District Court solely on the basis of this subsection, the District Court will be considered a Court of the Northern Mariana Islands for the purposes of determining the

requirements of indictment by Grand Jury or trial by jury.

(c) The District Court will have such appellate jurisdiction as the constitution or laws of the Northern Mariana Islands may provide. When it sits as an Appellate Court, the District Court will consist of three judges, at least one of whom will be a judge of a Court of Record of the Northern Mariana Islands.

Section 403. (a) The relations between the courts established by the constitution or laws of the United States of the Court of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus and other matters or proceedings will be governed by the laws of the United States pertaining to the relation between the courts of the United States and the courts of the several states in such matters and proceedings, except as otherwise provided in this article; provided that for the first fifteen years following the establishment of an Appellate Court of the Northern Mariana Islands the United States Court of Appeals for the judicial circuit which includes the Northern Mariana Islands will have jurisdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands from which a decision could be had in all cases involving the constitution, treaties or laws of the United States, or any authority exercised thereunder, unless those cases are reviewable in the District Court for the Northern Mariana Islands pursuant to subsection 402(c).

(b) Those portions of Title 28 of the United States Code which apply to Guam or the District

Court of Guam will be applicable to the Northern Mariana Islands or the District Court for the Northern Mariana Islands, respectively, except as otherwise provided in this article."

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Organic Act of Guam Section 22 (48 USC §1424), using acceptable rules of statutory interpretation and legislative intent (where ascertainable) gives to the Territory of Guam sufficient powers of self-government so as to permit its legislature to create an Appellate Court separate from the Appellate Division of the District Court of Guam to which all appeals from the Superior Court of Guam, also created by the Legislature of Guam, are to be directed, to the exclusion of the Appellate Division of the District Court of Guam as a court in the appeals chain for local cases heard in local courts.

STATEMENT OF THE CASE

On September 11, 1975, Edmund J. Olsen was convicted of receiving, concealing and withholding stolen property; burglary in the second degree (two counts); and assault with a deadly weapon, judgment being entered against him on November 4, 1975, at which time he was sentenced. On October 28, 1975, Edmund J. Olsen filed a Notice of Appeal to the District Court of Guam and to the Supreme Court of Guam from the jury verdict of guilty which was

handed down on September 11th. (See Appendix page A-1). On March 9th, Judge Cristobal C. Duenas, District Judge, acting as Presiding Judge of the Appellate Division of the District Court of Guam, dismissed the appeal of Defendant Olsen (Appendix page A-2). Thereupon, Defendant appealed to the United States Court of Appeals for the Ninth Circuit from the dismissal entered in the Appellate Division of the District Court (Appendix page A-3). The Ninth Circuit Court then ordered (Appendix page A-11) that the case be heard en banc without further briefs or arguments (briefs having been filed, but no argument held in this case at that time), after which the court rendered its opinion declaring the laws of Guam giving jurisdiction of such appeals to the Supreme Court of Guam contrary to the Organic Act of Guam (Appendix page A-12). From this opinion, the petition for a Writ of Certiorari was sought by the Territory of Guam, which has been granted.

The decision of the Ninth Circuit Court en banc dealt with the sole question of jurisdiction of the District Court of Guam and the Supreme Court of Guam and overruled the previous case of *Agana Bay Development Company (Hongkong) Ltd. v. Supreme Court of Guam,* No. 75-1059 (529 F.2d 952). The *Agana Bay* case had upheld the power of the Legislature of the Territory to create a Supreme Court of Guam. No issue pertaining to the Respondent's criminal conviction is raised either by the appeal to the Ninth Circuit or by this case.

ARGUMENT

I

THE STRUCTURE AND LEGISLATIVE HISTORY OF SECTION 22 OF THE ORGANIC ACT OF GUAM (48 USC 1424) FAIRLY INDICATES THAT CONGRESS, AFTER ESTABLISHING A BASIC COURT SYSTEM, LEFT ITS DEVELOPMENT UP TO THE PEOPLE OF GUAM.

As first enacted in 1950, Section 22 of the Organic Act (48 USC 1424) established "the judicial authority of Guam" and established the jurisdiction of the District Court of Guam. The "judicial authority of Guam" was vested in *both* the District Court of Guam *and* "in such court or courts as may have been or may hereafter be established by the laws of Guam." (48 USC §1424). From this statement, it is evident that the court or courts which may have been, or may be in the future, established by the laws of Guam share with equal dignity the "judicial authority of Guam." Congress has not set up, in this sentence, a system of superior and inferior courts for the territory.

A comparison of the above language and that found in the revised Organic Act of the Virgin Islands is instructive. The equivalent sentence in the revised Organic Act of the Virgin Islands states:

> "The judicial power of the Virgin Islands shall be vested in a Court of Record to be designated the 'District Court of the Virgin Islands', and in such court or courts of inferior jurisdiction as may have been or may hereafter be established by local law." (48 USC §611).

There can be no question that the Virgin Islands are not permitted to create a court having equal dig-

nity with the District Court of the Virgin Islands. This is not the case with Guam as the Organic Act of Guam (as enacted in 1950), continues with:

> "The District Court of Guam shall have the jurisdiction of a District Court in the United States in all causes arising under the constitution, treaties and laws of the United States, shall have original jurisdiction in all causes in Guam, jurisdiction over which has not been transferred by the Legislature to other court or courts established by it, and shall have such appellate jurisdiction as the Legislature may determine." (48 USC 1424).

On the other hand, the Organic Act of the Virgin Islands (48 USC 1612) grants to that District Court general original jurisdiction in all other causes in the Virgin Islands, "exclusive jurisdiction over which is not conferred by this chapter, Sections 104 and 111 of this title, and section 3350(c) of Title 26 upon the inferior courts of the Virgin Islands." In addition, the District Court of the Virgin Islands may, when it is "in the interest of justice" transfer to itself an action or proceeding brought in an inferior court. Further, the District Court may have appellate jurisdiction to review the judgment of the inferior courts of the Virgin Islands.

It is not an oversight that such a provision was not placed in the original Organic Act of Guam by Congress. Similar provisions were contained in the draft of the Organic Act provided to the Senate by the Department of Interior in 1949. Of the draft Organic Act, the Department has this to say:

"The judicial branch would consist of a Supreme Court, with a single justice appointed by the President, with the advice and consent of the Senate for a six year term, and of such *inferior courts* as the Legislature might create. The judicial district of Hawaii would be extended to include Guam so that the United States District Court for the district of Hawaii would have jurisdiction over certain cases arising in Guam. It would review final judgments of the Supreme Court of Guam in certain classes of cases." (emphasis added) (*Legislative History,* to U.S. Cong. Serv. '50, page 2847).

In committee, the Senate changed this draft to provide for a District Court of Guam having federal jurisdiction and such local jurisdiction as the Legislature of Guam had not transferred to local courts. The final version accepted by the Senate was suggested by Judge Albert B. Meris, who proposed these changes in a letter to the Senate which stated, in part:

"Furthermore, I suggest that the sounder legislative approach to the jurisdictional question involved in the section would be to confer upon the District Court original jurisdiction in all federal causes and in all other causes in Guam except such as the Legislature may assign to other courts." (2 U.S. Cong. Serv., '50, page 2853).

While this version of the Organic Act was adopted for Guam, again Congress consciously did not adopt this proposal for the Virgin Islands. The Department of Interior, in presenting its proposal, disagreed

with the concept that all local cases could be transferred to courts created by the Virgin Islands. In this respect, the Department stated:

"The Chamber of Commerce Bill and the Legislative Assembly Bill, unlike the Department (of Interior) Bill would retain the provision of the present Organic Act authorizing the Legislature to establish a Superior Court and to transfer to it from the District Court jurisdiction over alll causes other than those arising under the laws of the United States." (2 U.S. Code Cong. & Adm. News—'54, pages 2599-2600).

Judge Albert Meris, being a judge of the Third Circuit Court of Appeals, commented extensively upon its Virgin Islands Organic Act as the Virgin Islands were within his circuit. Unlike his recommendations with regards to Guam, Judge Meris believed that the District Court should be able to transfer "specific cases from an inferior court to the District Court for trial and determination." The judge believed that the inferior courts of the Virgin Islands were incapable of handling test cases of great importance. He comments further by saying:

"Otherwise the local legislature might, by conferring jurisdiction upon the inferior courts in much more serious classes of cases, deprive the District Court of jurisdiction which *you intend* that it shall have and which under accepted standards of judicial administration it ought to retain." (emphasis added) (2 U.S. Code Cong. & Adm. News—'54, page 2607).

Judge Meris then comments that, like Guam, there should be concurrent jurisdiction with the District Court and the inferior courts of the Virgin Islands. However, with regards to the Virgin Islands, Judge Meris provided suggested amendments to the law which vary in significant and substantial detail from those of the Organic Act of Guam (supra, page 2607). Judge Meris' suggestions were later adopted into law.

Immediately following the adoption of the Organic Act of Guam, the First Guam Legislature, in Public Law 77, created the Appellate Division of the District Court and provided for appeals to that court. Public Law 77 of the First Guam Legislature went on to state that appeals should be heard by three judges, chosen from among the judges who could sit on the District Court and who could be appointed by the Chief Justice of the United States. (See *Corn v. Guam Coral Co.*, 318 F.2d 622, 624 (1963)). Pursuant to this law, Appellate Judges from the District Court of Hawaii sat as part of the Appellate Division of the District Court of Guam.

Because this proved to be cumbersome, Congress, in 1958, amended the Organic Act of Guam (48 USC 1424) to provide the procedure for the Appellate Division and a better method of appointing Appellate Judges for it. Of this amendment, Judge Albert B. Meris, in a letter to the Chairman of the House Committee on Interior and Insular Affairs in support of HR 4215 which would add the second paragraph to 48 USC 1424, stated:

"Section 22(a) of the Organic Act of Guam also provides that the District Court shall have such appellate jurisdiction as the Legislature may determine. The local Judiciary Act, Public Law 117, First Guam Legislature, 1951, which was passed when I was out there, conferred upon the District Court broad appellate jurisdiction to review the decisions of the Island Court of Guam, an inferior court established under the prior naval rule which was continued by that act with municipal, domestic relations and probate court jurisdiction. In line with the Guamanian request for a procedure in which appeals would be considered by a court of three judges, which, as they pointed out, is the traditional American method, the local act provided for an Appellate Division of three judges, the regular judge of the court and two other judges to be assigned to the court by the Chief Justice of the United States under section 24(a) of the Organic Act. This Appellate Division has functioned heretofore by the assignment to it by the Chief Justice of the two District Judges from Hawaii. See *Eiban vs. Government of Guam,* (115 F.Supp. 519).

"Section 2 of the Bill would incorporate into Section 22(a) of the Organic Act an additional paragraph recognizing and making suitable procedural provisions for the Appellate Division of the District Court as it now exists under the local law. This would eliminate any doubt as to the status of the Appellate Division and would make it available to be designated hereafter as the Appellate Court for the Trust Territory of the Pacific Islands, a course which would seem logi-

cal and in the public interest, . . ." (2 U.S. Code Cong. & Adm. News—'58, p. 2629)

That amendment consisted of, among other things, the second paragraph of 48 USC 1424(a) and is to be found on page 3 of this brief. The Senate Report, No. 1582, states the intention of this additional paragraph to be:

> "an additional paragraph recognizing and making suitable procedural provisions for the Appellate Division of the District Court as it now exists under the local law. Presently, under Guam law (Public Law 17, First Guam Legislature, 1951) the District Court of Guam has broad appellate jurisdiction to review the decisions of the Island Court of Guam, an inferior court established under the prior naval rule and which has municipal, domestic relations and probate court jurisdiction. Existing Guam law provides for an Appellate Division of three judges, the regular judge of the court and two other judges to be assigned by the Chief Justice of the United States. Thus far the Chief Justice has assigned two District Judges from Hawaii as occasion demands it. Section 2 also establishes procedures under which the Appellate Division of the District Court of Guam shall operate." (2 U.S. Code Cong. & Adm. News—'58, pp. 2623-4).

Therefore, it is evident from reading the plain language of Section 22(a) of the Organic Act (48 USC 1424), a comparison between it and the revised Organic Act (48 USC 1424), a comparison between it and the revised Organic Act of the Virgin Islands, especially 48 USC 1612, and of the respective legislative histories of these acts, that the Congress of the United States intended that the jurisdiction allowed to the courts of Guam be different and greater than that allowed to the courts of the Virgin Islands. The local courts of Guam share an equal measure of the judicial authority of Guam with the District Court of Guam. The only exclusive jurisdiction granted to the District Court of Guam is that of federal matters and the territorial income tax. There is no hint of the legislative history of the 1958 amendment to the Organic Act of Guam (Public Law 85-444, Section 21, 72 Stat. 179, 1958, 48 USC 1424(a), as amended) that this legislation was designed to remove the power of the local Guam Legislature to decide what appellate jurisdiction, if any, lay with the District Court of Guam. Rather, it appears that Congress was reacting to a need which was made manifest by the actions of the First Guam Legislature.

II

THE ENTIRE HISTORY OF THE ORGANIC ACT OF GUAM SHOWS THAT CONGRESS HAS REACTED TO, RATHER THAN ANTICIPATED, ACTS OF THE GOVERNMENT OF GUAM.

Only one year after passage of the Organic Act, Congress realized that it had not properly anticipated the effects of Guam granting extensive appellate jurisdiction to the Appellate Division of the District Court. In reaction to Public Law 17 of the First Guam Legislature, and to correct the Organic Act to be in conformance with that procedure, Congress

adopted Section 48 of Public Law 248 (65 Stat. 726) which amended 28 USC § 1291 to provide that the Ninth Circuit hear *all* appeals from the District Court of Guam, regardless of the amount in controversy. Prior to that time, the Ninth Circuit had jurisdiction to hear only certain appeals from the District Court of Guam. (See *Corn v. Guam Coral Co.,* 318 F.2d 622, 624 (1963)).

A situation was created similar to that existing now where an act of the Guam Legislature created a void in the federal law which Congress *later* filled as soon as the need was made known. It is recognized that a void exists if this court upholds the power of the Legislature of Guam to enact the law under review here. However, Congress may, and no doubt will, act to fill that void as soon as it knows precisely how existing law is interpreted and what the void is that it must fill. Until a final resolution of this case, Congress cannot know in what manner it must fill the void of its relationship between the local courts and the United States Court system. Nowhere does Petitioner advocate a total separation of the local courts of Guam from the Article III courts of the United States.

Again in 1958, a void appeared in that, because of the extensive appellate jurisdiction exercised by the Appellate Division of the District Court, it became necessary to amend the Organic Act again so that judges more knowledgeable of the local situation and more accessible to it, would be appointed to sit on the Appellate Division of the District Court. (In

1958, before the advent of jet transportation, Hawaii was still over twelve hours flying from Guam and the West Coast was in excess of 24 hours flying time from Guam.) In commenting upon this change, the Ninth Circuit in *Corn* (supra, p. 627) noted that the Appellate Division was originally a creation of the Guam Legislature "in response to which section 1291 was amended."

> "Congress, in enacting Public Law 85-444, 72 Stat. 178-179, 1958, 42 USC §1424(a), as amended was . . . recognizing and making suitable procedural provisions for the Appellate Division of the District Court as it now exists under the local law." S. Rept. No. 1582, 85th Cong. 2d Sess. 1958, 1958 U.S. Code Cong. & Adm. News, page 2623.
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> "Thus, instead of purporting to create a new appellate body, Congress in 1958 was only formalizing the procedural means by which the District Court should exercise its theretofore existing appellate jurisdiction, jurisdiction which antedated the amendment to 28 USC 1291." *(Corn,* supra, at page 627).

There have been no further amendments to the judiciary portion of the Organic Act to the present time. However, the same is not true of the remainder of the Organic Act. In 1970 Congress, in response to the request of the people of this territory, amended the Organic Act to provide for an elected governor. (See Public Law 90-497, 82 Stat. 842.)

The applicability of the Internal Revenue Code to Guam has caused similar and considerable action by Congress in *reaction to* various problems which

have surfaced *from time to time* because of the initial writing of the provisions. Because of numerous lawsuits, subsections (b) through (h) have been added to the Organic Act to supplement 48 USC 1421(i)(a). Because of still further inequities caused by Congress's adopting the "mirror image" of the Internal Revenue Code as the Guam Territorial Income Tax, Public Law 92-606 was passed eliminating many of the inequities, but again as a result of the observation of the operation of the system. (See Legistive History Public Law 92-606, 3 U.S. Code Cong. & Adm. News—'72, pp. 5401-5409).

Therefore, it is evident that the Ninth Circuit was in error when it observed that Guam lacked the authority to create a Supreme Court of Guam because Congress had not acted first to provide some form of relationship between the courts of Guam created by the Court Reorganization Act. (Public Law 12-85, 12th Guam Legislature, 1974; see A-8, Petitioner's Petition for Writ of Certiorari, but *note* that on page A-11 of Petition, 3rd paragraph, the reference to Public Law 12-85 should read "Public Law 12-189".) and the courts of the United States created under Article III of the Constitution. The whole response of Congress to needs on Guam has been one of reaction, rather than anticipation. Therefore, where the plain language of the Organic Act allows action by the Legislature of Guam, as it does in 48 USC 1424(a), this court should uphold its power and allow Congress to react in whatever way it sees fit. This court should not require that Congress first anticipate the actions

of the Guam Legislature, before the Legislature can act.

III

THE NINTH CIRCUIT ERRONEOUSLY ASSUMED THAT PUBLIC LAW 85-444, IN AMENDING 48 USC 1424(a), REPEALED BY IMPLICATION PUBLIC LAW 17 OF THE FIRST GUAM LEGISLATURE AND SUBSTITUTED FEDERAL LAW IN ITS PLACE.

The wording of 48 USC 1424(a) as enacted August 1, 1950 allowed the Guam Legislature to create an appellate system for the Courts of Guam and to determine the jurisdiction of that system. Thus, the Guam Legislature in P.L. 17 was able to establish that such appeals were to be determined through the medium of an Appellate Division of the District Court of Guam. This legislative power was not removed by the 1958 amendment to 48 USC 1424(a) set out in Public Law 85-444. Rather, P.L. 85-444 merely provided that the District Court of Guam shall have jurisdiction in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy and inserted a paragraph requiring that appeals to the District Court be heard and determined by an appellate division. Remaining completely intact is the statutory language which originally enabled the Guam legislature to establish an appellate system. " . . . the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of

Guam . . . shall have such appellate jurisdiction as the legislature may determine. The jurisdiction of and the procedure in the courts of Guam other than the District Court of Guam shall be prescribed by the laws of Guam." 48 USC 1424(a). Thus, just as the Guam legislature once properly exercised its authority in P.L. 17 in determining to adjudicate appeals from the Guam courts through an appellate division of the District Court of Guam it may now determine to remove appellate jurisdiction from the District Court and to adjudicate such appeals through another medium such as that established in P.L. 12-85. The paragraph inserted by P.L. 85-444 simply indicates that when appeals are sent to the District Court of Guam they shall be heard and determined by the appellate division of the court. There is, on the other hand, no statutory requirement that appeals from the courts of Guam must be determined by the District Court should the Guam legislature elect to establish another appellate process.

Any purported repeal by P.L. 85-444 of the power granted the Guam legislature to create and determine the jurisdiction of an appellate court system can only be based upon inference. The conclusion that P.L. 85-444 operates as such an implied repeal is supported by neither the facts nor the law. In a class action Non-Indian employees of the Bureau of Indian Affairs challenged preferential employment for qualified Indians in the B.I.A. pursuant to the 1934 Indian Reorganization Act which they contended was implicitly repealed by the Equal Employment Opportunities

Act of 1975, § 11, prohibiting discrimination in most federal employment on the basis of race. Below, the three-judge United States District Court concluded that the latter law implicitly repealed the Indian preference. In rejecting appellee's contention of a silent repeal by the most recent law, the Supreme Court, considering legislative history and federal policy, found that the purpose of the preferences was to give Indians greater participation in their own self-government to carry out the Government's trust obligation toward the Indian tribes, and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life. The thrust of the Indian Reorganization Act was to establish machinery to enable Indian tribes to assume a greater degree of self-government both politically and economically. There being nothing in the legislative history to indicate affirmatively Congressional intent to repeal the 1934 preference, but rather, ample evidence of contrary legislative intent and the 1934 act being an important component of a longstanding Government program, it was a prototypical case where an adjudication of repeal by implication is not appropriate. The rule that repeals by implication are not favored was directly applicable. *Morton v. Mancari* (1974), 417 U.S. 535, 94 S.Ct. 2474. In the instant case as well as in *Morton* there is nothing to indicate an affirmative showing of an intent to repeal. P.L. 85-444 is not irreconcilable with the establishment of an appellate system for the courts of Guam, and in fact, such a step is consistent with the general impetus toward greater self-government for Guam.

The wording in the 1950 enactment of 48 USC 1424(a), which has allowed the Guam legislature to establish a court system and to determine appellate jurisdiction, has not been changed by P.L. 85-444 despite the P.L. 85-444 amendment. Retention of this wording despite amendment to the section indicates that a silent decision to remove such a power has not been made. In an action to recover damages and for injunctive relief because of a refusal to sell a house in a private subdivision to plaintiff solely because of race, it was held that the Civil Rights Act of 1866 was intended to prohibit all discrimination, private as well as public, in the sale or rental of property and that the scope of the 1866 act was not altered when it was re-enacted in 1870 following the adoption of the Fourteenth Amendment. Re-enactment did not indicate an intent to limit application of the former law to state action. The rule is that repeals by implication are not favored and thus Congress did not make a silent decision in 1870 to exempt private discrimination from the 1866 act. *Jones v. Alfred Mayer Co.* (1968), 392 U.S. 409, 88 S.Ct. 2186.

In the instant case, repeal by implication is not justified by the presence of either clear intent or irreconcilable repugnancy. It is a cardinal rule of statutory construction that repeals by implication are not favored. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission* (1968), 393 U.S. 186, 89 S.Ct. 354; *Lynch v. Household Finance Corporation* (1972), 406 U.S. 911, 92 S.Ct. 1611; *United States v. Students Challenging*

Regulatory Agency Procedures (1973), 412 U.S. 669, 93 S.Ct. 2405.

Finally, the appellate system indicated by the Guam Legislature in P.L. 12-85 was actually established and staffed. An extensive alteration in the basic underlying structure of an established program is not to be inferred from ambiguous statutory language which is not clarified by legislative history. *Rosado v. Wyman* (1970), 397 U.S. 397, 90 S.Ct. 1207.

IV

WHERE A STATUTE, SUCH AS 48 USC 1424(a), PROVIDES A CLEAR MEANING, IT IS ERROR TO GO BEHIND THAT CLEAR MEANING TO LOOK FOR LEGISLATIVE INTENT WHICH IS CONTRARY TO SUCH CLEAR MEANING OF THE STATUTE.

As has been shown elsewhere in the Brief, the first paragraph of 48 USC 1424(a) gives to Guam the authority to determine what, if any, jurisdiction over appeals the District Court of Guam is to possess. The Legislature of Guam used this power in Public Law 17, First Guam Legislature, and gave to the District Court extensive appeal jurisdiction.[1] This law was not

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[1]Code of Civil Procedure, Laws of Guam: § 63. Appellate Jurisdiction. The District Court of Guam shall have jurisdiction of appeals from the judgments, orders and decrees of the Island Court in criminal causes as provided in the Penal Code, Part II and Title VIII, and in civil causes and proceedings as provided in the Code of Civil Procedure, Part II and Title VIII, Chapter VI; Article II, and Title 12, Chapters I and II, and Part III, Title I, Chapter V; and Title II, Chapter IV; and Title VII, Chapter 12, and the Probate Code, Division III, Chapter XXI, Article IV and Division IV, Chapter XVI.

§ 65. Appellate Division. Appeals from the Island Court shall be heard and determined by an Appellate Division of the District

changed until the Court Reorganization Act of 1974. At such time, the Legislature determined that it no longer desired the Appellate Division of the District Court to hear appeals from local cases arising in the new Superior Court, a continuation of the Island Court, now having general jurisdiction of all non-federal matters.

This is not in violation of the Organic Act, since the second paragraph of 48 USC 1424(a) addresses itself to procedural matters only. (See *Corn v. Guam Coral Co.,* supra at p. 627.) Thus, Congress in 1958 created no new court by federal law. However, the first paragraph of 48 USC 1424(a) does permit the Legislature to determine what appellate jurisdiction the District Court may have. Unless the Guam Legislature does act, the District Court of Guam will have *no* appellate jurisdiction whatsoever.

It is axiomatic that that which the Legislature may create, it may also repeal. To hold otherwise would be to state that 48 USC 1424(a) actually required the Guam Legislature to take the mandatory action

Court, consisting of three judges, of whom two shall constitute a quorum. The Appellate Division, when requested by the moving party, shall also herein determine motions for rehearing or a new trial made after final decision of the District Court in all cases tried originally in that court in which such final decision is not appealable to the United States Court of Appeals for the Ninth Circuit. The judge appointed for the court by the President shall be the Presiding Judge of the Appellate Division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the Appellate Division at any session shall be designated by the Presiding Judge from among the judges assigned to the court from time to time by the Chief Justice of the United States pursuant to § 24a of the Organic Act of Guam (48 USCA 1424(b) . . . (Enacted 1953, U. S. Code reference added by editor.)

that it has, thereby relegating Public Law 17 of the First Guam Legislature to the level of a mere ministerial act. However, such plain language cannot be read in this manner. By Public Law 12-85, the Twelfth Guam Legislature repealed Public Law 17 of the First Guam Legislature and in its stead did precisely what it was permitted to do by the first paragraph of 48 USC 1424(a), namely, declare that the District Court of Guam was to have no appellate jurisdiction and to create additional courts having local jurisdiction, such courts (Supreme Court of Guam) being of equal dignity to the District Court in local matters as is specifically permitted by the first sentence of 48 USC 1424(a).

Statutory interpretation begins with the presumption that a statute under analysis should be accorded its literal meaning. Thus, the rule of law that when a statute uses plain understandable words the court will not subject to further methods of analysis is supported by a long flow of case law. The United States District Court for the Central District of California, confronted with interpreting a federal statute, summarized the law as follows:

> "It is universal that when a statute uses plain understandable words, the court cannot legislate but must interpret the words as they read without any modification. 'It is our judicial function to apply statutes on the basis of what Congress has written, not what Congress might have written.' *United States v. Great Northern Railway Co.,* 343 US 562, 575; 72 S.Ct. 985, 993; 96 L.Ed. 1142 (1952)."

The Ninth Circuit erred in overruling the laws of Guam in that the Ninth Circuit assumed that Congress meant something that it did not state in 48 USC 1424(a), and decided the case on that basis. The fact that Congress did not foresee and include some provision for the relationships between an Article III and the Supreme Court of Guam, does not mean that Congress failed to give the Legislature of Guam the power to create such a court apart from the District Court of Guam by the plain words of the statute. This is well explained by the majority of the panel of the Ninth Circuit which considered *Agana Bay Development Co. (Hongkong) Ltd. v. Supreme Court of Guam,* 529 F.2d 952.

Likewise, that decision explained the comparison between the Organic Act of Guam which gives the Legislature of Guam great powers over the jurisdiction of its courts, and that of other territories in the past which were given limited, or no powers, to change the jurisdiction of their territorial courts—all of which was accomplished by the plain words of the Organic Act in question. The dissent in the *Agana Bay* case, which was adopted by the majority of the court in the instant case, is in serious error when it relies upon the fact that no appeal to an Article III court would occur under the new Court Reorganization Act before Congress may act, as a basis for invalidating the Supreme Court of Guam. If the Legislature determined, as it may under 48 USC § 1424(a), that no, or very few appeals may be taken to the District Court, then the same result would

occur as complained of by the Ninth Circuit. (See page A-2, Petition for Writ.) The Guam Legislature is the only body which may determine the appellate jurisdiction of the District Court.

V

THIS COURT HAS RULED PREVIOUSLY THAT CONGRESS MAY PERMIT TERRITORIAL COURTS TO EXERCISE ANY JURISDICTION WHICH CONGRESS COULD PLACE IN A FEDERAL COURT FOR A TERRITORY.

This Court has previously ruled that the jurisdiction of a territorial court is concurrent with that of the Federal District Court of that Territory, unless Congress has made that federal jurisdiction exclusive. *(The American Ocean Ins. Co. v. 356 Bales of Cotton),* 1 Peters 511, 7 L.Ed. 242, 255). This Court found that the "judicial authority of the territory [of Florida]" was given equally to the superior and inferior courts, even though the Florida Territorial Legislature could create only inferior courts. A similar case applies to the Territory of Guam except that here the Congress did not limit the Legislature of Guam to creating "inferior" courts. The judicial authority of Guam is given equally to the District Court and whatever courts the territory of Guam may establish. The only exclusive jurisdiction that is given applies to cases arising under the constitution, laws and treaties of the United States and to cases arising on account of the operation of the Guam Territorial Income Tax.

Therefore, this Court has already found that there is no hindrance to the Legislature of the territory acting to create jurisdiction in a court of its own making unless the Congress has specifically carved out an exclusive jurisdiction in a District Court, or other court created by the Congress. Congress has not done so here. There is no reason to alter that opinion in the case of the Territory of Guam.

VI

THAT THE POWER TO CREATE A SUPREME COURT OF GUAM IS NOT DENIED BY THE WORDING OF THE ORGANIC ACT OF GUAM, IN A COMPARISON WITH SIMILAR POWERS GIVEN TO THE COMMONWEALTH OF THE NORTHERN MARIANAS.

The United States, in the "Covenant to establish a Commonwealth of the Northern Marianas in political union with the United States of America", has, in its grant of jurisdiction to the future courts of the Commonwealth of the Northern Marianas, established their powers with wording almost identical to that which grants jurisdiction to the District and Territorial courts of Guam. Such grant of jurisdiction is now contained in Public Law 94-241 (90 Stat. 266, 267). (See pages 3-6 of this Brief.) That grant of jurisdiction establishes a District Court for the Northern Marianas having identical jurisdiction to the District Court of Guam. It will have original jurisdiction in all causes arising under the Constitution, treaties or laws of the United States regardless of the sum or value in controversy; it will have

original jurisdiction in all causes "over which is not vested by the constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands." (90 Stat. 266.) Further, the District Court of the Northern Marianas will have such appellate jurisdiction "as the constitution or laws of the Northern Mariana Islands may provide." (90 Stat. 267.) Section 403 continues and establishes the relationship between these courts and the courts established by the United States. Because this covenant was the result of the negotiations between the parties which have had more than 25 years of experience since Guam's Organic Act which enabled them to see where Guam is at this time, the relationships between the local and federal courts were established. However, it is evident that Congress did not have such 25-year foresight in 1950, or even in 1958. However, by using identical language in the *Covenant,* it is evident that Congress and the President intended that the jurisdiction be the same. There is no indication that the powers of the Legislature of Guam should be any different from those given to the Commonwealth of the Northern Marianas when identical language is contained in each "organic" act.

The intent of this portion of the *Covenant* is contained in the official history of the negotiation of that document. (Page A-6, 7 of the Petition for Writ of Certiorari.) In this History it was clearly established that the Legislature of the Northern Marianas "be under no obligation to grant any appellate jurisdiction to the District Court for the Northern Mariana

Islands. The Legislature may choose at any time and from time to time to establish Appellate Courts of the Northern Mariana Islands and to eliminate or reinstate the appellate jurisdiction of the District Court." The entire suit before this court involves the power of the Legislature of Guam to accomplish the same ends as are provided for an identical grant of power to the future Commonwealth of the Northern Mariana Islands. Surely, it cannot be said that Congress, in using the same language, intended to be more restrictive in dealing with Guam than in dealing with the future Commonwealth of the Northern Marianas. In view of the history of the negotiations, it is evident that the parties to those negotiations (which did not include Guam, even as an observer) intended that the jurisdiction of the territorial courts of the Commonwealth have as broad a power as could be given them and in so determining believed that the language used in the Organic Act of Guam would give them such power. If the Court is to decide that Guam does not possess such power, then such power cannot be possessed despite the plain wording, by the Commonwealth of the Northern Marianas.

VII

THE INTERPRETATION URGED BY PETITIONER IS NOT IN CONFLICT WITH THE ENTIRE ORGANIC ACT OF GUAM, WHICH IS ACTUALLY A "SCAFFOLDING" WHICH ESTABLISHED A FRAME OF GOVERNMENT AND PERMITS THE TERRITORY TO ALTER THAT AS THE SITUATION WARRANTS.

The Petitioners are not asking this Court to interpret 48 USC 1424(a) in a manner more liberal than similar grants given to the Legislature and Executive throughout the remainder of the Organic Act of Guam. For instance, instead of providing a definite power of appointment such as is contained in Article II, Clause II, paragraph 2 of the United States Constitution, the Organic Act of Guam allows the Governor to appoint and remove all officers and employees of the Executive Branch "except as otherwise provided in this or any other act of Congress *or under the laws of Guam, . . .*" (48 USC 1422, para. 5) Likewise, unlike the constitution of many states which limit the Legislature in the enactment of bills to bills having one subject (see §19, Constitution of Indiana, 1 Burns Indiana Statutes Annotated), the Organic Act of Guam places no restriction whatsoever upon the subject matter of bills which the Legislature may enact, provided they are of local application, nor does it regulate in any manner the adoption of appropriation bills, permitting riders and extraneous matters to be adopted. (See 48 USC 1423(a)) Also, even when it comes to the appointment of heads of executive agencies and instrumentalities, the Governor is given this power "except as

otherwise provided in this chapter *or the laws of Guam,"* (48 USC 1422c(a)). In the case of executive power, the Governor is given a broad power of item veto (48 USC 1423(i), is authorized to execute both the laws of Guam and the laws of the United States applicable in Guam (48 USC 1422, para. 5) and he is given the power to "issue executive orders and regulations not in conflict with any applicable law." (42 USC 1422, para. 6)

Therefore, it can be seen that all three branches of government within the Territory of Guam are given powers in the Organic Act which powers may be changed and amended by the laws of Guam at any time. From this emerges a pattern. Congress established the basic form of government for the territory in 1950. However, in the Organic Act itself, Congress provided for the expansion and creative development of that government by local powers. Thus, the appointment power of the Governor was not fixed by Congress, but was established by Congress and the local legislature given the power to change and amend it wherever and whenever it felt necessary. Likewise, with the respect to the Governor's powers to issue executive orders and regulations, Congress gave him great leeway to fill in voids where the Legislature had not acted or had acted inconsistently. Similarly, Congress gave to the Legislature of Guam the broadest power (within the area of local application) to enact whatever legislation it deemed fit. Congress did not impose upon that body the limitations that the people of the several states normally place upon their

legislatures as a result of the long experience of the states. That long experience was left to be developed by the people of Guam.

It is the position of the Petitioner that a similar interpretation should be applied to the court system of Guam. The courts were established initially by the Congress so that Guam had a complete governmental system in 1950. However, Congress, realizing that the courts would develop along with the rest of the government, permitted the Legislature of Guam to develop and change the court system as the needs changed. Therefore, it is not contrary to the intent of Congress as expressed in the Organic Act itself to permit the Legislature of Guam to create a Supreme Court of Guam if the Legislature deems that such a court is necessary in the territory.

CONCLUSION

Therefore, the Petitioner prays that this Court reverse the ruling of the Ninth Circuit Court of Appeals which held that Guam had no authority to create its own Supreme Court having appellate jurisdiction over matters of the Superior Court of Guam. The Petitioner prays that this Court declare that the Organic Act of Guam, specifically 48 USC 1422(a), grants to the Territory of Guam sufficient powers of self-government to determine whether the District Court of Guam shall hear appeals from the Superior

Court or whether a locally-created Supreme Court of Guam shall hear such appeals.

The Petitioner has shown that neither the legislative history of the Organic Act, the history of a similar enactment applicable to the Commonwealth of the Northern Marianas, nor rulings of this Court would indicate anything other than the fact that 48 USC 1422(a) gives to the Legislature of Guam the power to create its own Supreme Court under the wording of such section as it has been enacted with respect to Guam.

Therefore, Petitioner urges that this Court reverse the opinion of the Ninth Circuit Court of Appeals in the instant case.

Dated, Agana, Guam,
December 29, 1976.

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SUPREME COURT, U. S.
FILED
FEB 22 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-439

THE PEOPLE OF THE TERRITORY OF GUAM,

Petitioners,

v.

EDMUND J. OLSEN,

Respondent.

BRIEF FOR RESPONDENT

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(5881-R)

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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-439

THE PEOPLE OF THE TERRITORY OF GUAM,

Petitioners,

v.

EDMUND J. OLSEN,

Respondent.

BRIEF FOR RESPONDENT

Respondent respectfully submits this brief in support of the decision of the United States Court of Appeals for the Ninth Circuit, and asks that the judgment below be affirmed. The decision of the Court of Appeals is reported at 540 F.2d 1011 (1976).

Question Presented

Whether section 22* of the Organic Act of Guam should be interpreted in an unprecedented way to authorize the Legislature of Guam to create a local court of last appeal

* Except as otherwise indicated, all references to section 22 of the Organic Act are to 48 U.S.C. section 1424.

and to transfer to it the appellate jurisdiction of the District Court of Guam, thereby denying the citizens of Guam appellate review of federal questions by Article III courts.

Statutes Involved

I. Section 22 of the Organic Act of Guam, Pub. L. No. 630, ch. 512, section 22, 64 Stat. 384 (1950), reads as follows:

> Sec. 22. (a) There is hereby created a court of record to be designated the "District Court of Guam", and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam shall have, in all causes arising under the laws of the United States, the jurisdiction of a district court of the United States as such court is defined in section 451 of title 28, United States Code, and shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. The jurisdiction of and the procedure in the courts of Guam other than the District Court of Guam shall be prescribed by the laws of Guam.
>
> (b) The rules heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code, in civil cases; section 2073 of title 28, United States Code, in admiralty cases; sections 3771 and 3772 of title 18, United States Code, in criminal cases; and section 30 of the Bankruptcy Act of July 1, 1898, as amended (title 11, U.S.C., sec 53), in bankruptcy cases; shall apply to the District Court of Guam and to appeals therefrom.

II. The subsequent amendments to section 22 are reflected in the language of 48 U.S.C. section 1424 (1970), the current codification of section 22:

> Section 1424. *District Court of Guam; jurisdiction; appellate division; rules of procedure.*
>
> (a) There is created a court of record to be designated the "District Court of Guam", and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam shall have the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. The jurisdiction of and the procedure in the courts of Guam other than the District Court of Guam shall be prescribed by the laws of Guam.
>
> Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 1424b(a) of this title. The concurrence of two judges shall be necessary to any decision by the District Court of Guam on the merits of an appeal but the presiding judge alone may

make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

(b) The rules heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of Title 28, in civil cases; section 2073 Title 28, in admiralty cases; sections 3771 and 3772 of Title 18, in criminal cases; and section 53 of Title 11, in bankruptcy cases; shall apply to the District Court of Guam and to appeals therefrom; except that no provisions of any such rules which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, and except further that the terms "attorney for the government" and "United States attorney", as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

III. Section 23 of the Organic Act of Guam, Pub. L. No. 630, ch. 512, section 23, 64 Stat. 384 (1950), reads in relevant part as follows:

> Sec. 23. (a) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the District Court of Guam in all cases involving the Constitution, laws, or treaties of the United States or any authority exercised thereunder, in all habeas corpus proceedings, and in all other civil cases where the value in controversy exceeds $5,000, exclusive of interest and costs.

> (b) Any party may appeal to the Supreme Court of the United States from an interlocutory or final judgment, or order of the District Court of Guam, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies or any officer or employee thereof, as such officer or employee, is a party.

IV. Section 23 was repealed in 1951 because certain amendments to certain sections of Title 28 of the United States Code had rendered it superfluous. Those sections reproduced here in relevant part, are:

> Section 1252. *Direct appeals from decisions invalidating Acts of Congress.*
>
> Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.
>
> Section 1291. *Final decisions of district courts.*
>
> The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

Section 1294. *Circuits in which decisions reviewable.*

Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

* * *

(4) From the District Court of Guam to the Court of Appeals for the Ninth Circuit.

Statement of the Case

Article IV, section 3 of the United States Constitution gives to Congress plenary power over the territories of the United States. Section 22 of the Organic Act of Guam, enacted in 1950 by the United States Congress pursuant to this authority, vested original and appellate jurisdiction in the District Court of Guam. The section authorized the Legislature of Guam to "transfer" the original jurisdiction of the District Court over causes not arising under the Constitution, treaties, and laws of the United States to local courts of its creation. The Act further provided that the District Court "shall have such appellate jurisdiction as the Legislature may determine." It did not authorize the "transfer" of the appellate jurisdiction to local courts.

In 1951, the First Session of the Legislature of Guam determined that the District Court's appellate jurisdiction should extend to broad categories of civil and criminal cases. Act of August 9, 1951, Pub. L. No. 17, section 1 (codified, Guam Code Civ. Proc. section 63 (1953) (First Guam Legislature). In 1974, however, the Legislature purported to eliminate the District Court's appellate jurisdiction entirely by creating a Supreme Court of Guam and transferring to that Court jurisdiction over all appeals

from the local Guamanian courts. Court Reorganization Act of 1974, Pub. L. No. 12-85 (Twelfth Guam Legislature).

Shortly thereafter, the plaintiff in a case before the local Guamanian court (the Superior Court of Guam) filed a notice of appeal from an order of that court to the Supreme Court of Guam, rather than to the District Court. *Dillingham Corp. of the Pacific* v. *Agana Bay Development Co. (Hong Kong) Ltd.*, Civ. No. 159-74 (July 19, 1974). The defendant in that case then petitioned the District Court for and was granted a writ of prohibition against the prosecution of the appeal in the Supreme Court of Guam. In granting this relief, the District Court declared void all sections of the Court Reorganization Act of 1974 which purported to divest the District Court of appellate jurisdiction on the ground that a transfer of appellate jurisdiction was beyond the power granted the Legislature by section 22 of the Organic Act of Guam. *Agana Bay Development Co. (Hong Kong) Ltd.* v. *Supreme Court of Guam*, 422 F. Supp. 593 (D. Guam 1974). The Court of Appeals for the Ninth Circuit reversed over the dissent of Judge Kennedy. 529 F.2d 952 (1976).

Respondent in the instant case was convicted of criminal charges in the Superior Court of Guam. On October 28 and 29, 1975, he filed notices of appeal respectively to the Supreme Court of Guam and to the District Court of Guam. His appeal to the District Court was dismissed by that Court for lack of jurisdiction on the authority of the majority opinion of the Court of Appeals in *Agana Bay*.

Appeal from this dismissal was heard by the Ninth Circuit Court of Appeals *en banc* which reversed and remanded, overruling the panel opinion in *Agana Bay*. The court concluded that the Organic Act did not authorize a

transfer of the appellate jurisdiction of the District Court. 540 F.2d 1011 (1976). The court further determined that:

> . . . the appellate jurisdiction of the district court may not be transferred without congressional authorization and pursuant to such provisions and safeguards as Congress may provide. *Id.* at 1017.

In reaching its conclusion, the court explicitly adopted the analysis of Judge Kennedy's dissent in *Agana Bay,* noting that it found:

> . . . particularly applicable to this case that portion of the *Agana Bay* dissent which points out that litigation in the territorial court may involve substantial federal questions which cannot be reviewed by the United States Supreme Court or by any other article III court under existing statutes. [Citation.] *Id.*

Petitioners filed a Petition for a Writ of Certiorari in this Court on September 22, 1976. The Writ was granted on November 15, 1976.

Summary of Argument

I

The language of section 22 of the Organic Act of Guam explicitly authorized the transfer of certain portions of the original jurisdiction of the District Court of Guam to local courts established by the Legislature of Guam. No such authorization was made with regard to any transfer of the District Court's appellate jurisdiction. Instead, the Act authorized the Legislature to "determine" the appellate jurisdiction of the District Court, that is, to determine in which cases appeals might be taken, not the court in which they could be heard.

This reading of section 22 is fully supported by the Act's legislative history. Prior to its passage of the Organic Act, Congress considered three separate bills. Each of these permanently vested appellate jurisdiction in the federal courts. Congress did not demonstrate the slightest intent to alter that usual arrangement when amending these bills. Moreover, subsequent enactments in 1951 and 1958 were consistent only with the view that Congress intended that the appellate power in Guam be vested in the District Court.

II

In providing civil governments for the territorial possessions of the United States, Congress has been careful to impose checks upon the exercise of judicial power by those governments. A review of the pertinent legislation discloses that the decisions of territorial courts are always subject to review by federal appellate courts. Petitioners assert that Congress intended to except the Guamanian judiciary alone from these traditional and universal restraints and authorized the Guam Legislature to remove all appellate jurisdiction over Guamanian cases from the District Court and other federal courts. That conclusion is unsupported and erroneous. Explicit language evidencing a Congressional intent to depart so radically from judicial norms is absent from the Act, and no reason exists for Congress to have singled out Guam for special treatment in this important respect.

III

An interpretation of section 22 that would permit the Legislature of Guam to insulate the local Guamanian courts from the federal appellate power would impose on Guamanians a burden borne by no other American citizens.

Guamanians alone would be denied access to federal review of local court decisions involving questions of federal law. A determination that Congress intended to permit such a burden to be imposed would raise serious questions as to the constitutionality of the Organic Act itself. Petitioners' interpretation of the Act should be rejected in favor of one consistent with the normal constitutional pattern requiring review by Article III courts of questions arising under federal law.

ARGUMENT

I

The Organic Act of Guam does not authorize the Legislature of Guam to transfer to an independent local court the appellate jurisdiction of the District Court of Guam.

The extent of the original and appellate jurisdiction of the District Court of Guam is set forth in a single sentence of section 22 of the Organic Act of Guam. As amended, this sentence provides that:

> The District Court of Guam shall have the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. 48 U.S.C. section 1424 (1970).

The language of this sentence as well as the legislative history of section 22 and subsequent amendments thereto

makes clear that Congress did not accord the Legislature of Guam authority to transfer jurisdiction over appellate cases from the District Court to an independent tribunal such as the recently-created Supreme Court of Guam.

A. The Language of Section 22

The critical sentence of section 22 quoted above authorizes the legislature of Guam to "transfer" the *original* jurisdiction of the District Court to such courts as it may establish. No reference to any authority to "transfer" *appellate* jurisdiction is contained in that sentence. Rather, it provides that the District Court "shall have such appellate jurisdiction as the legislature may determine." As Congress expressly demonstrated in the immediately preceding clause of the sentence that it could explicitly provide authority to "transfer" the original jurisdiction of the District Court, it must be concluded that it did not intend to provide such authority with respect to its appellate jurisdiction. *See, F.T.C.* v. *Sun Oil Co.*, 371 U.S. 505, 514-15 (1963). The logical construction of the language providing that the appellate jurisdiction be "determined" by the Legislature of Guam is that the Legislature may determine the nature of causes from which appeals may be taken and the extent of such appeals.

Petitioners appear to propose in the first section of their Argument (Brief at pp. 8 *et seq.*) that this Court should ignore the difference in the language used in this sentence with respect to original and appellate jurisdiction and look only to the language of the first sentence of section 22, which provides that:

> ... [T]he judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts

as may have been or may hereafter be established by the laws of Guam.

Petitioners assume that since this language does not explicitly deny appellate jurisdiction to any local courts that might be established, Congress must have meant for them to possess such jurisdiction. Even if the sentence stood alone, that conclusion would be questionable. But the sentence does not stand alone. It is immediately followed by another, which makes explicit provision for the exercise of jurisdiction. As we have seen, that latter sentence provides for the exercise of original jurisdiction both by the District Court and by the local courts, and provides for the exercise of appellate jurisdiction only by the District Court. Surely, if Congress had cared to authorize the Legislature to transfer appellate jurisdiction from the District Court, it would have done so in the explicit manner in which it authorized the transfer of original jurisdiction.

Moreover, any contrary interpretation could be in conflict with the United States Constitution, Article IV, section 3, which grants Congress plenary power over the territories of the United States. *Inter-Island Steam Navigation Co. Ltd.* v. *Hawaii,* 305 U. S. 306, 314 (1938); *Mormon Church* v. *United States,* 136 U.S. 1, 42-44 (1890). If this Court interprets statutory language describing the powers of territorial governments so as to permit the exercise by such governments of authority not explicitly granted by Congress, the courts will assume the role assigned to Congress. If, as Petitioners ask this Court to do, the courts can "find" power, *unless* that power was *explicitly withheld* by Congress, then the courts, not Congress, will determine how the territories are governed. Congress has been assigned

the duty of granting power to or withholding power from territorial governments; where Congress does not employ language explicitly granting power, the courts must assume that Congress chooses not to grant power. It must be concluded that Congress, in enacting section 22, expressly limited the jurisdiction of the local courts of Guam when it authorized the Legislature to transfer original, but not appellate, jurisdiction to them.

B. The Legislative History of Section 22

Even if the language of the statute itself did not make clear the Congress' intention to limit the authority of the Legislature of Guam over the appellate jurisdiction of the District Court, well established principles of statutory construction would require such a conclusion. It has long been recognized by this Court that general terms in a statute should not be broadly applied where such a construction would conflict with the purpose of the statute. As Mr. Justice Fields stated in *United States* v. *Kirby* (74 U.S. (7 Wall.) 482, 486-87 (1868)):

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence . . . The reason of the law in such cases should prevail over the letter.

This general tenet, integral to rational statutory interpretation, was used effectively by the Court in *Sorrells* v. *United States* (287 U.S. 435 (1932)), in which it read a defense of entrapment into the National Prohibition Act. *See id.* at 446 and cases cited therein. *See also* HART & SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAK-

ING AND APPLICATION OF LAW (tent. ed. 1958) (approving use of the canon in *Sorrells*).

More recently, this Court invoked the doctrine in *United Housing Foundation, Inc.* v. *Forman* (421 U.S. 837 (1975)) in deciding the scope of the term "security" as used in the Securities Acts. As Justice Powell stated:

> [I]n construing these Acts against the background of their purpose, we are guided by a traditional canon of statutory construction:
>
> [A] thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. [Citation] 421 U.S. at 849. *See also, United States* v. *American Trucking Assns.*, 310 U.S. 534, 543 (1940).

The legislative history of the Organic Act makes clear that to interpret the language of section 22 authorizing the Legislature to "determine" appellate jurisdiction generally as a broad authorization to transfer appellate as well as original jurisdiction to local courts, would conflict with the spirit of the section as a whole and with the congressional intent in enacting it. The term must be construed narrowly to comport with the spirit of the entire statutory scheme and the intention of Congress as set forth in the legislative history of the section.

Consistent with the language of section 22, this history demonstrates that Congress never proposed or indeed considered authorizing the Legislature of Guam to transfer appellate jurisdiction from the District Court to local courts at the time the original Act was passed. The Organic Act,

as passed in 1950, provided for appellate review by the United States Supreme Court and by the Court of Appeals for the Ninth Circuit of certain decisions of the District Court of Guam. Organic Act of Guam, Pub. L. No. 630, ch. 512, section 23, 64 Stat. 384 (1950). No provision was made for federal appellate court review of the decisions of any other court of Guam. In claiming that section 22 allows the Legislature of Guam to transfer the power to review cases arising in the local courts from the District Court, Petitioners necessarily argue that Congress intended to permit the Legislature to deny litigants in local courts the possibility of access on appeal to the federal appellate courts, even in cases before the local courts which turn on questions of federal law. But the legislative history of the Act demonstrates that Congress never even considered giving the Legislature such power.

In the second session of the Eighty-first Congress, hearings were held and reported on three bills to provide civil government for Guam. All three provided access to federal appellate courts, at least for all cases raising questions involving the Constitution, treaties, and laws of the United States.

The first proposal was S. 185.* That bill would have established a District Court of Guam. District Court decisions were to be reviewed in the federal appellate courts as if the District Court were a United States District Court. The bill also provided that the Legislature could transfer District Court jurisdiction, except in cases arising under

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* S. 185, S. 1892, and the original version of H.R. 7273 are reproduced in *Civil Government for Guam, Hearing Before a Subcomm. of the Senate Comm. on Interior and Insular Affairs,* 81st Cong., 2d Sess. 1-25 (1950).

the laws of the United States, to a "Superior Court."* However, the very next sentence after this grant of power provided that appeals could be taken from the Superior Court in the same manner as from the District Court. That is, provision was made that Superior Court decisions could be reviewed by the federal appellate courts.

S. 1892 created a "Supreme Court of Guam" and provided explicitly for appeal from decisions of the Supreme Court to the federal District Court in Hawaii. Appeals could be taken from Supreme Court judgments:

(a) In cases arising under a statute or treaty of the United States;

(b) in all civil cases with a matter in controversy larger than $3,000, exclusive of interest and costs;

(c) in criminal prosecutions for offenses punishable by imprisonment for a term of more than one year; and

(d) in habeas corpus proceedings.

Decisions of the Hawaiian District Court were subject to further appellate review. In addition, litigants in a case in the local courts of Guam could remove the case to the Hawaiian district court in accordance with standard provisions for removal.

* Congress showed with this bill that it knew how to authorize a transfer of appellate jurisdiction in unmistakable fashion when it chose to authorize such a transfer at all. Section 21(a) of S. 185 specified the causes over which the District Court was to exercise jurisdiction, including "(7) all appeals from judgments rendered in the inferior courts." Section 19 established the Superior Court, and provided that the legislature might "transfer from the district court to such superior court jurisdiction over *any or all* causes other than those arising under the laws of the United States." [Emphasis supplied.]

H.R. 7273 (which as amended became the Organic Act of Guam) in its original version also established a "Supreme Court of Guam." The bill provided for direct review in the Court of Appeals for the Ninth Circuit of all final decisions of the Supreme Court of Guam:

(a) in cases involving the Constitution, laws, or treaties of the United States or any authority exercised thereunder;

(b) in habeas corpus proceedings; and

(c) in other civil cases where the value in controversy exceeded $5,000, exclusive of interest and costs. Litigants in the local courts were empowered to remove to the District Court for the Northern District of California under the usual circumstances.

In other words, all of the bills considered by Congress prior to the passage of the Organic Act provided for review in federal appellate courts of decisions of the highest court of Guam in every case involving a question of federal law.*

The history of the amendments reveals no desire on the part of Congress to depart from this well-established pattern for federal appellate review. According to the Senate Committee Report on H.R. 7273, the purpose of the Committee amendment to section 22 of that bill was to replace the Supreme Court of Guam as originally proposed with a separate federal District Court in Guam which, it was believed, would promote the development of American busi-

* With the minor exception of S. 1892, which did not authorize appeal to the District Court of Hawaii in civil cases involving, but not arising under, federal law when the amount in controversy was under $3,000, and in criminal cases when the maximum sentence was one year or less. These *de minimis* limitations embody an incidental restriction of the sort often placed on district court jurisdiction.

nesses in the Far East more readily than the Hawaiian District Court or the District Court for Northern California. As the Senate Report explained:

> Another section to which the Senate committee devoted considerable time and thought was that concerning the establishment of a court system on Guam.
>
> Given a period of peace, the growth of Guam as a transportation and commercial center for American interests in the Far East seems almost a foregone conclusion. American business enterprise in the area will want, and need, a center in which it can have the full protection of American laws and legal procedure.
>
> Formerly this need was supplied by the United States Court for China, which had its headquarters in Shanghai, but that court was abolished by the treaty with China ending extraterritoriality. The nearest American court to far eastern economic centers is that in Hawaii, which is 12 or more hours away from Guam by air. If Guam is to afford American business enterprise the protection and stability needed, a court in Guam which will have on-the-spot jurisdiction in matters involving admiralty and business reorganization is clearly indicated. S. Rep. No. 2109, 81st Cong., 2d Sess. 4 (1950).

While the establishment of a District Court for Guam seemed desirable, there would not have been enough federal business in Guam to occupy fully the time of a District Court judge. That, apparently, was the reason for the elimination, at the time of the amendment, of all earlier references to a "Supreme Court" in Guam; the cases which Congress had intended that the Supreme Court should hear would instead be dealt with by the judge of the District Court. The replacement of the Supreme Court with the District Court led, of course, to elimination of the provi-

sions of the bill which explicitly provided for federal court review of decisions of the Supreme Court of Guam.

The final language of the present section 22 resulted from an amendment suggested by Judge Albert B. Maris (who was the judicial advisor to Guam) and the Administrative Office of the United States for reasons having no relevance to the issue of appellate jurisdiction. As is indicated in the following paragraph from Judge Maris' letter of July 6, 1950 to Senator Joseph O'Mahoney which contained the language of the present statute, he was concerned with the designation of the District Court as a "federal" court and possible limitations on its original jurisdiction over local matters:

> Turning to proposed section 22(a) of the bill I note that the District Court of Guam is described as a "United States district court." I question whether this is an appropriate description since the court is not being created under the judiciary article of the Constitution, article III, section 1, but rather under article IV, section 3, which gives Congress power to regulate the territory of the United States. Moreover, if, as seems to me inevitable, the major business of the court will be to consider and dispose of local cases the designation is hardly apt. Furthermore, I suggest that the sounder legislative approach to the jurisdictional questions involved in this section would be to confer upon the district court original jurisdiction in all Federal causes and in all other causes in Guam except as such as the legislature may assign to other courts. I would, therefore, suggest that section 22(a) read as follows: [the language of the present law]. S. Rep. No. 2109, 81st Cong., 2d Sess. 12 (1950).

There is nothing either in this letter or elsewhere in the legislative history to indicate that Congress, in adopting

this amendment, even considered the issue of a transfer of appellate jurisdiction from the District Court to courts established by the Legislature of Guam. Rather the amendment was intended to make clear the broad original jurisdiction of the District Court over local as well as federal cases. That appeals should be available from local courts to the federal appellate courts, at least in cases involving questions of federal law, was assumed by Congress throughout its deliberations on the various proposals to establish court systems in Guam. And there is nothing in the legislative history to suggest that Congress ever departed from this original assumption.

C. Subsequent Amendments to the Organic Act

Further support for the conclusion that Congress intended that appeals from the local Guamanian courts be heard in the District Court is found in the 1951 and 1958 amendments to the Organic Act.

As passed in 1950, section 23 of the Organic Act authorized appeals from final decisions of the District Court of Guam to the Court of Appeals for the Ninth Circuit:

(a) in all cases involving the Constitution, laws, or treaties of the United States or any authority exercised thereunder;

(b) in all habeas corpus proceedings; and

(c) in all other civil cases where the value in controversy exceeded $5,000, exclusive of interest and costs. The Act also provided for direct appeals from the District Court to the United States Supreme Court in a limited class of cases.

In the very next session of Congress, amendments to 28 U.S.C. sections 1291 and 1292 strengthened the link between the District Court of Guam and the Court of Appeals for the Ninth Circuit. The new language in section 1291 replaced that portion of section 23 authorizing appeals to the Court of Appeals. Power of review was extended to judgments of the District Court in a group of local cases (criminal cases raising only issues of local law and civil cases raising only issues of local law with a value in controversy of less than $5,000) that could not previously have been taken from the District Court to the Court of Appeals. Act of October 31, 1951, Pub. L. No. 248, ch. 655, section 48, 65 Stat. 710. It is impossible to reconcile this amendment with Petitioners' contention that Congress was not concerned about whether cases in the Guam courts could be reviewed in federal appellate courts. *See* S. Rep. No. 1020, 82d Cong., 1st Sess. 15-16 (1951). At the same time, section 1292 was amended to permit review by the Court of Appeals of certain interlocutory orders of the District Court. Act of October 31, 1951, ch. 655, section 49, 65 Stat. 710. The District Court of Guam had been the only territorial District Court not included in 28 U.S.C. section 1292; Congress felt that there was no reason for the relationship between the territorial court of Guam and the Court of Appeals to be different in this respect from that between the District Court of Hawaii and the Court of Appeals. S. Rep. No. 1020, 82d Cong., 1st Sess. 16(1951).

Section 22 of the Organic Act was further amended in 1958 (Act of June 4, 1958, Pub. L. No. 85-444, 72 Stat. 178) to provide that appeals brought in the District Court be heard and determined by an appellate division of that court consisting of three judges. Congress thus sanctioned the

arrangements for the exercise of the appellate jurisdiction of the District Court which had been made previously by the Legislature of Guam and explicitly incorporated the existing Appellate Division as an integral part of the judicial system of Guam. *See Agana Bay Development Co. (Hong Kong) Ltd.* v. *Supreme Court of Guam,* 529 F.2d 952, 960 (9th Cir. 1976) (Kennedy, J., *dissenting*).

This amendment did not (despite the lengthy contentions of Petitioners' Brief at pp. 19-23) repeal authority given to the Guam Legislature by the original Organic Act, to transfer appellate jurisdiction from the District Court. To the contrary, such authority was never granted by the original Act. The amendment does indicate that in 1958 it still had not occurred to Congress that appellate jurisdiction could be exercised by any court of Guam other than the District Court. The amendment does not in any sense admit of the possibility that a local appellate court might someday replace the Appellate Division; nor does the amendment establish an Appellate Division "until such time as the Legislature of Guam shall see fit to abolish it." The Appellate Division is made a division of the District Court, a part of the Guam judiciary as defined by the Organic Act of Guam. Petitioners' interpretation of section 22 of that Act as containing an implied authorization for the Legislature of Guam to transfer all appellate jurisdiction from the District Court would authorize the Legislature to destroy the Appellate Division provided for by Congress in this amendment and would thereby render nugatory the entire second paragraph of that same section 22.

A far more appropriate conclusion is that Congress intended in 1950, in 1951, and in 1958, that jurisdiction over

appeals from the local courts of Guam should be vested in the District Court and specifically in an Appellate Division of that court. The system created in 1950, and strengthened by subsequent amendments, was a system in which the District Court's appellate jurisdiction, the one link between the local courts and federal appellate tribunals, was to remain in the District Court and was not to be transferred to local courts. It is not for the Legislature of Guam to repeal this consistent statutory structure created by Congress.

II

In establishing exclusive appellate jurisdiction in the District Court of Guam, Congress was guided by the same principles which have governed the creation of the judicial systems of the other territories of the United States.

Petitioners' position, if accepted by this Court, would create a radical departure from accepted patterns of U.S. territorial government, and a unique system of governance for the Territory of Guam. There is no basis in history or logic for this position. To the contrary, the evidence is overwhelming that Congress intended that Guam be a part of our one federal judicial system, along with the States and the other territories of the United States.

Political, economic, and social conditions in the territories vary widely. It is therefore hardly surprising that the local governments of all the territories have not been struck from a single mold, or that the territories are not bound to the United States under identical arrangements. However, while many of the characteristics of the territo-

rial governments have been shaped by varying local conditions, Congress has seen fit to impose a consistent system of constitutional control on the local judiciary in all territories for which local judiciaries have been established. That such control should be imposed in all cases is hardly surprising. Courts in the territories, like local courts in the States of the Union, decide questions of federal law, either pursuant to concurrent jurisdiction over cases arising under federal law or because federal questions are often involved in cases which arise under laws of local application. To permit the courts of the territories to decide such questions with no opportunity for review by the federal judiciary would in effect grant to a territorial judiciary powers beyond those of the several States.

Statutory control over the territorial judiciaries has taken two forms. The first—by virtue of the power to appoint, remove, and compensate judicial officials—ensures that judicial officers implement and enforce the laws of the United States. The second is the power invested in federal appellate courts to review local court decisions. An examination of judicial arrangements in jurisdictions that are or were recently territories confirm this consistent pattern.

A. Hawaii

While Hawaii is, of course, no longer a territory, the restrictions exercised over Hawaii's judicial power before Hawaii became a state are instructive. Under the provisions of section 81 of the Act of April 30, 1900, ch. 339, 31 Stat. 141, the judicial power of the Territory of Hawaii was vested in one Supreme Court, in circuit courts, and in other courts of inferior jurisdiction. The three members

of the Supreme Court and the judges of the circuit courts were appointed for four-year terms by the President of the United States, by and with the advice and consent of the Senate. *Id.*, sections 80 and 82. Those judges were subject to removal by the President (*Id.*, sections 80 and 82) and were paid by the United States. *Id.*, section 92.

Section 86 of the Act created a District Court. The District Court consisted of one judge, appointed to a six-year term by the President by and with the advice and consent of the Senate. The district judge was also subject to removal by the President. *Id.*, section 86. His salary was paid by the United States. *Id.*, section 92.

Section 86 of the Act also provided that appeals from the District Court should be taken to the Court of Appeals for the Ninth Circuit. Appeals and removal of causes from the courts of the Territory of Hawaii to the courts of the United States were governed by the laws relating to such matters as between the courts of the States and those of the United States.

In the years between 1900 and the admission of Hawaii into the Union, a number of the provisions outlined above were amended. Most notably, the power to review judgments of the Supreme Court of Hawaii, originally vested in the United States Supreme Court by section 86 of the Act of April 30, 1900, and by the Act of March 3, 1911, Pub. L. No. 475, ch. 231, section 246, 36 Stat. 1087, as if the Supreme Court of Hawaii had been the highest court of a

state, was transferred to the Court of Appeals for the Ninth Circuit. Act of February 13, 1925, Pub. L. No. 415, ch. 229, sections 1, 13, 43 Stat. 936. But power to appoint judges (for limited terms) to the Supreme Court, the circuit courts, and the District Court remained with the President, as did the power of removal. Further, at all times, all final decisions of the Supreme Court and of the District Court involving the laws of the United States (and some other decisions) were reviewable in the United States Supreme Court or in the United States Court of Appeals for the Ninth Circuit.

B. Alaska

Unlike the Territory of Hawaii, the Territory of Alaska was not given separate local and federal courts. Instead, the Act of June 6, 1900, ch. 786, section 4, 31 Stat. 321 established a District Court in Alaska as a court of general jurisdiction. The judges of the District Court were appointed by the President by and with the advice and consent of the Senate for a term of four years, unless sooner removed by the President for cause. Act of June 6, 1900, section 10. Salaries were payable from the Treasury of the United States. *Id.*

The Act also provided that, in a limited class of cases, final judgments of the District Court could be appealed directly to the United States Supreme Court. *Id.*, section 504. Virtually all other final judgments, as well as certain interlocutory orders of the District Court, were made reviewable in the Circuit Court of Appeals for the Ninth Circuit. *Id.*, sections 504, 507.

While some amendments were made to the law governing the judicial power in Alaska prior to Alaska's admission into the Union, the major features of the judicial system, including the right of appeal of judgments to an Article III court, did not change.

C. Puerto Rico

Shortly after the United States took control of Puerto Rico, Congress passed "An Act Temporarily to provide revenues and a civil government for Puerto Rico." Act of April 12, 1900, ch. 191, 31 Stat. 77. Section 33 of the Act vested the judicial power of Puerto Rico in the courts then operating on the island, but provided that the justices of the Supreme Court of Puerto Rico be appointed by the President, by and with the advice and consent of the Senate.

The Act also created a "district court of the United States for Puerto Rico." The district judge was appointed in the same way as were the justices, for a four-year term unless sooner removed by the President. *Id.*, section 34. His salary and the salaries of the justices were set in section 36.

Relations between the District Court and the local courts of Puerto Rico were governed by the rules which applied to relations between the courts of the United States and the courts of the States. *Id.*, section 34. Appeals from both the Supreme Court and the District Court could be taken to the United States Supreme Court in all cases in which it was alleged that a right claimed under the Constitution, treaties or laws of the United States had been denied. *Id.*, section 35.

Amendments to this system were made prior to the time Puerto Rico became a commonwealth. For example, the Act of January 28, 1915, Pub. L. No. 241, ch. 22, section 2, 38 Stat. 803, and the Act of March 2, 1917, Pub. L. No. 368, ch. 145, section 42, 39 Stat. 951, made the District Court a part of the First Circuit. The rules governing appeals from judgments of the United States District Courts to the Courts of Appeals and to the United States Supreme Court were made applicable to appeals from the District Court for Puerto Rico. Act of March 2, 1917, section 42. Appeals from the Supreme Court of Puerto Rico were also transferred to the Circuit Court of Appeals for the First Circuit. *Id.*, section 43. The basic structure of the court system remained unchanged.

When the Constitution of the Commonwealth of Puerto Rico took effect, the law establishing the courts of Puerto Rico was repealed. Act of July 3, 1950, Pub. L. No. 600, ch. 446, section 5, 64 Stat. 319. Article V of the Puerto Rican Constitution provides for local control of the appointment and payment of the Puerto Rican judiciary. But final judgments of the Supreme Court of Puerto Rico can still be reviewed in the United States Supreme Court under 28 U.S.C. section 1258 (1970); *see* 7B Moore's Federal Practice, section 1258 (2d ed. 1976).

The judges of the District Court in Puerto Rico now hold office during good behavior. 28 U.S.C. sections 119, 133, and 134 (1970). However, their decisions are still subject to review by the First Circuit Court of Appeals. 28 U.S.C. sections 41, 1291 and 1292 (1970).

D. Canal Zone

The judicial system of the Canal Zone is governed by Title 3 of the Canal Zone Code, Pub. L. No. 87-845, 76A Stat. 51 (1962). Chapter 1 of Title 3 creates the United States District Court for the District of the Canal Zone. The judge for the district is appointed by the President, by and with the advice and consent of the Senate, for a term of eight years unless sooner removed by the President for cause. He receives the salary of a judge of the United States District Court.

As in the case of the Territory of Alaska, in the Canal Zone no separate court system was created for local cases. The District Court has jurisdiction over most of these. Canal Zone Code, title 3, section 141. Magistrates' courts are given jurisdiction over minor matters, but the magistrates are chosen by the President or his designee, and the District Court reviews decisions of the magistrates. *Id.*, sections 82, 141(3), and 171.

All final decisions and certain interlocutory decisions of the District Court in the Canal Zone can be reviewed by the Court of Appeals for the Fifth Circuit, except where direct review can be had in the United States Supreme Court. 28 U.S.C. sections 1291, 1292, and 1294 (1970).

These features of the judicial system for the Canal Zone are substantially those provided by the Act of August 24, 1912, Pub. L. No. 337, ch. 390, sections 8-9, 37 Stat. 560.

E. Virgin Islands

Shortly after the United States purchased the Virgin Islands from Denmark, Congress passed "An act to provide a temporary government" for those Islands. Act of March

3, 1917, Pub. L. No. 389, ch. 171, section 2, 39 Stat. 1132. Section 2 of the Act stipulated that until Congress should otherwise provide, all cases previously reviewable in the courts of Denmark should thereafter be appealed to the Circuit Court of Appeals for the Third Circuit. *See Clen* v. *Jorgensen,* 265 Fed. 120 (3d Cir. 1920). The Act of February 13, 1925, Pub. L. No. 415, ch. 229, section 1, 43 Stat. 936, amended the Judicial Code of the United States to provide that appeals from final decisions of the courts of the Virgin Islands would be available in all cases involving the Constitution, statutes or treaties of the United States, and in certain other cases.

In 1936, Congress passed the Act of June 22, 1936, Pub. L. No. 749, ch. 699, 49 Stat. 1807 (1936). Section 25 of the Act vested the judicial power of the territory in the District Court for the Virgin Islands and in such courts of inferior jurisdiction as might be established by local law.* The District Court was granted broad original jurisdiction in federal and local cases, and, as well, jurisdiction over all appeals from judgments of inferior courts of the Islands. Act of June 22, 1936, sections 28 and 32.

Section 26 of the Act provided that the judge for the District Court would be appointed by the President, by and with the advice and consent of the Senate, for a four-year term unless sooner removed by the President for cause.

* Petitioners argue (at pages 8 to 15 of their Brief) that the scope of the original jurisdiction granted to the local court of Guam in section 22 is greater than the scope of the original jurisdiction which may be exercised by the local courts of the Virgin Islands. From this they conclude that Congress must have intended that the local courts of Guam exercise appellate jurisdiction, which the local courts of the Virgin Islands do not. Respondent does not quarrel with the statement regarding the jurisdiction of the lower courts, but submits the Petitioners' conclusion as to appellate jurisdiction simply does not follow.

His salary was to be paid by the United States Department of Justice. *Id.,* section 26. The procedure for appeals from the District Court remained unchanged. *Id.,* section 30.

In other words, Congress provided the Virgin Islands with a unitary judicial system like those of Alaska and the Canal Zone, but unlike those of Hawaii and Puerto Rico. That is, the District Court rather than a federal appellate court had immediate jurisdiction over appeals from cases heard in other territorial courts.

A proviso to section 25 of the Act deserves attention. That proviso authorized the legislative assembly to transfer from the District Court to a "Superior Court" jurisdiction over "any or all" cases except those arising under the laws of the United States. But Congress followed this grant of power immediately, as in the proposed S. 185 (81st Cong., 1st Sess. (1949)) concerning Guam (discussed in Part IB of this Brief), with a statement that any cases heard by the Superior Court should be appealed in the manner authorized for appeals from the District Court. Authority to create a Superior Court was withdrawn by the Act of July 22, 1954, Pub. L. No. 517, ch. 558, sections 21-22, 68 Stat. 497.

The judicial system for the Virgin Islands otherwise remains today substantially as provided for by the 1936 Act. *See* 28 U.S.C. sections 1252, 1291, 1292, and 1294; 48 U.S.C. sections 1611-14 (1970). Indeed, even the recent grant to the people of the Virgin Islands of the authority to adopt a constitution for local self-government requires that a system of local courts be provided which is

consistent with the provisions of currently applicable law. Act of October 21, 1976, Pub. L. No. 94-584, section 2(b)(6), 90 Stat. 2899. Under the currently applicable law, the legislature may determine which local cases are serious enough to be reviewed in the District Court. 48 U.S.C. section 1612 (1970). But the legislature may not create a rival appellate court and thereby cut off the federal appellate power.

F. Northern Mariana Islands

On March 24, 1976, Congress approved a Covenant "to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" and for other purposes. Pub. L. No. 94-241, 90 Stat. 263. Under the terms of the Covenant, not all of which have yet taken effect, the United States will exercise sovereignty over the Northern Mariana Islands.

Section 401 of the Covenant provides for the establishment of a District Court for the Northern Mariana Islands. The court is vested with the jurisdiction of a United States District Court, but without any requirement that a minimum sum be in controversy (Covenant at section 402(a)) as well as with original jurisdiction over all other cases jurisdiction over which is not vested in local courts by the laws of the Islands. Covenant at section 402(b). Further, the court is granted "such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide." Covenant at section 402(c).

Unlike the Organic Act of Guam, the Covenant unmistakably indicates that appellate jurisdiction may be vested in a local court rather than in the District Court. Section

403 of the Covenant provides that the usual rules relative to appeals, certiorari, removal and other procedures shall apply to the relations between the courts of the United States and those of the Northern Mariana Islands. But the section then excepts from this rule appeals from the final decisions of the "Appellate Court for the Northern Mariana Islands." Appeals from that court are to be heard by the Court of Appeals for the Ninth Circuit, rather than by the United States Supreme Court, for the first fifteen years after the Appellate Court is established unless those appeals can be taken to the District Court.

Sections 402 and 403 thus provide that the legislature of the Northern Mariana Islands may create an appellate court, decisions of which are not subject to review by the District Court but which are subject to review in the federal appellate courts. Petitioners suggest in Point VI of their Argument that much of the language in section 402 dealing with local legislative control of the appellate jurisdiction of the District Court is similar to the language of section 22 of the Organic Act of Guam. From this they conclude that the legislature of Guam must, under section 22, have authority to create an appellate court, decisions of which are not subject to review by the District Court (or by any federal court).

In effect, Petitioners' claim is that language employed by Congress in 1950 must be assumed to have the exact meaning of similar, but not identical, words used by a different Congress twenty-five years later in a statute containing other substantially different provisions. That assumption is incorrect. It is only in the context of section 403, which provides for review of local judgments in federal

appellate courts, that the language of section 402 can be read to empower the legislature of the Northern Mariana Islands to transfer appellate jurisdiction from the District Court.

No provision corresponding to section 403 was made a part of the Organic Act of Guam. The words of section 22, coming as they do in a very different context, reasonably require an interpretation different from that of the words of the Northern Mariana Islands' Covenant. Even though section 402 of the Covenant allows transfer of District Court appellate jurisdiction to local courts, federal appellate courts can, by reason of section 403, still review decisions of the courts of the Islands; the traditional control over the territorial judiciary is present. To interpret the Organic Act of Guam, which has no section equivalent to section 403, in the same way would be to destroy the accepted structure.

G. Other U. S. Territories

The broad plan for controlling the territorial courts reflected in the legislation governing the various territories is not of recent design. One need only look to the provisions of the Revised Statutes of the United States governing the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, Wyoming, and Washington to learn that the same principles were applied by Congress in the nineteenth century. The Supreme Court in each of these territories consisted of three justices appointed by the President, by and with the advice and consent of the Senate, for four-year terms. R.S. sections 1864, 1877, 1907, and 1908 (1875). The judges' salaries were set by Congress and paid by the United States. R.S. sections 1879 and 1882 (1875).

The Supreme Court in each territory could hear appeals from all final decisions of the District Courts below under regulations prescribed by law. R.S. sections 1869, 1910 and 1911 (1875). Appeals from the territorial Supreme Courts (except that of Washington) to the United States Supreme Court could be brought in any case in which the sum in controversy exceeded $1,000. R.S. section 1909 (1875). In the Territory of Washington, any case presenting a federal question or in which the sum in controversy was greater than $2,000 could be appealed. R.S. section 1911 (1875). Decisions of the territorial Supreme Courts or the District Courts upon writs of habeas corpus involving personal freedom could also be appealed to the United States Supreme Court. R.S. section 1909 (1875).*

What emerges from this review of the relevant law of current and former territories with Congressionally-established judiciaries is a clear pattern of Congressional concern that all territorial judiciaries be subject to certain significant federal checks. Judges of the important local courts have traditionally been appointed by the President and confirmed by the Senate. They have usually been subject to removal by the President, and in any event generally serve for short terms. And—most pertinent here—decisions of the local courts, at least in cases involving questions of federal law, have been subject to review in federal appellate courts.

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* Petitioners suggest with a reference to *American Insurance Co.* v. *356 Bales of Cotton* (26 U.S. (1 Pet.) 511 (1828)), a case nearly 150 years old, that in the territory of Florida a different relationship between federal and local courts may have existed. On the contrary, *American Insurance Co.* says nothing about whether the power of appellate review can be taken from the federal courts. That case merely held that the Superior Court of the Territory of Florida had not been given exclusive original jurisdiction in admiralty cases.

The three proposed Organic Acts of Guam on which hearings were held in the Eighty-first Congress, Second Session, fit into this long-established pattern. As mentioned in Part IB of this Brief, S. 185, S. 1892, and the original version of H.R. 7273, all provided for review by federal courts of decisions of the highest court in Guam in cases involving federal law. S. 1892 and the original H.R. 7273 provided as well for Presidential appointment of judges of the highest court.

The recent statute authorizing the voters of Guam (and the voters of the Virgin Islands) to adopt a constitution for local self-government demonstrates that Congress is still concerned that nothing destroy the link between the courts of Guam and the federal appellate courts.* The section which authorizes a constitutional provision establishing a system of local courts stipulates that the provision will not take effect until Congress enacts legislation regulating the relationship between the local courts and the federal court system.** Act of October 21, 1976, Pub. L. No. 94-584, section 2(b)(7), 90 Stat. 2899.

* The statute, which was passed almost contemporaneously with the grant of *certiorari* in this case, also makes it doubtful that the issue here presented remains, in the words of the Petition for *certiorari* (at p. 12), an issue "of great significance in determining the degree of self-government permitted to the Territory of Guam."

** The comments of the Department of the Interior's Director of Territorial Affairs on early versions of the bill which did not contain this stipulation are instructive. The Department was concerned that the original bills might "give the government of the Virgin Islands or Guam the power to . . . establish a judicial system without review by the U. S. Supreme Court. . . ." *Constitution for the Virgin Islands and Constitution for Guam: Hearing before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs*, 94th Cong., 1st Sess. 18 (1975) (Statement of Fred M. Zeder).

Against this background, the interpretation of the Organic Act of Guam advanced by Petitioners is insupportable. It is inconceivable that Congress meant to permit Guam and Guam alone to establish a territorial court that was composed of judges not appointed by the President whose decisions on federal questions could not be reviewed in the federal courts. No explanation has been advanced as to why Guam alone should be so treated.

Surely it cannot be assumed that Congress meant to break drastically from the pattern of constitutional control of the judiciary established in every other territory, particularly where the language of the statute is easily susceptible to an alternative interpretation that is consistent with the traditional scheme.

III

Petitioners' interpretation of the Organic Act would render that Act unconstitutional and should therefore be avoided.

As discussed in Point II of this Brief, Petitioners' interpretation of section 22 would place Guam in a uniquely independent position among American territories. It would deprive Guamanians—alone—of the ability to obtain judicial review by courts authorized under Article III of the Constitution. Just as Congress has consistently maintained American control and supervision over territorial courts, it has also ensured that individual territorial litigants be afforded the opportunity for review in constitutionally created courts.

It has been clear since *Martin* v. *Hunter's Lessee* (14 U.S. (1 Wheat.) 304 (1816)) that the decisions of local courts were intended by the framers of the U. S. Constitution to be subject to Article III judicial review. There would thus be immediate constitutional problems if Guam were authorized to deny such review to its citizens. *See generally,* Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic,* 66 HARV. L. REV. 1362 (1953). To avoid the constitutional ramifications of Petitioners' approach, the Court should not strain the language of the Organic Act to find that Congress meant to permit Guam's citizens to be singled out from all other Americans in this extraordinary way.

In this context, the remarks of Representative Philip Burton, Chairman of the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, on the recent Act authorizing the voters of Guam and the Virgin Islands to establish constitutions for local self-government (Act of October 21, 1976, Pub. L. No. 94-584, 90 Stat. 2899) are noteworthy:

> It's self-evident that the bill of rights will be respected and appeals to the Federal courts as for any other American wishing to appeal to the Federal court [*sic*]. There is no way that a local home rule thing can abrogate that constitutional right of the American people. No way on Earth. And there is no suggestions [*sic*] from any quarter that it would be done. *Constitution for the Virgin Islands and Constitution for Guam: Hearing before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs,* 94th Cong., 1st Sess. 22 (1975).

In light of this unqualified pattern, it would be extraordinary to infer that in 1950, when Guam was given a civilian government by Congress as a first step in the development process, it gave to the Legislature of Guam the power to create an appellate court system completely insulated from review by an Article III or any other federal court. Congress has never given such power to any territory, and, of course, it is enjoyed by no State in the United States.

Judge Kennedy, dissenting in the original panel decision in *Agana Bay* (529 F.2d at 958-61) showed a sensitive concern for the right of Guamanian litigants as United States citizens to receive review in Article III courts:

> Prior to 1974, virtually all significant matters were within either the original or appellate jurisdiction of the district court, and reviewable by this court and the United States Supreme Court. Under the new system, only cases "arising under" federal law or involving the territorial income tax remain within federal court jurisdiction [*see* Guam's Court Reorganization Act, Pub. L. No. 12-85, section 5]. As to other matters there is no appeal beyond the Supreme Court of Guam. Important federal issues can be presented in cases which do not "arise under" federal law. . . . It seems unlikely to me that Congress intended to confer on the territorial legislature the power to eliminate review in the federal court system of all claims raised in the territorial courts. . . . 529 F.2d at 960.

Judge Kennedy went on to point out that under Petitioners' asserted interpretation, it would be possible for the Legislature of Guam to grant even original federal question jurisdiction to Guam's Superior Court, which would effectively bar Article III review of even those cases, since removal to the District Court of Guam would not be available

under 28 U.S.C. section 1441 (1970). *See* 529 F.2d at 960-61, n.3. The *en banc* opinion of the Ninth Circuit in the instant case quite correctly paid heed to Judge Kennedy's reasoning. 540 F.2d 1011, 1012 (9th Cir. 1976). It would no doubt have astounded the 81st Congress to be told that this Court would be asked to decide, on the basis of the language of section 22 of the Organic Act, that Congress had determined that Guam should have a court system totally isolated from the federal courts. Such an interpretation would be inconsistent with the historical theme of federal territorial supervision and congressional assurances of Article III review of decisions of the territorial courts.

The recent congressional action relating to Guam underscores and clarifies this analysis. As discussed in Point II (see *supra* at p. 36), in authorizing Guam to establish a system of local courts, Congress specifically provided that it first would have to enact legislation regulating the relationship between the local courts of Guam and the Federal judicial system. Act of October 21, 1976, Pub. L. No. 94-584, section 2(b)(7), 90 Stat. 2899. Indeed, the Guam Constitution must itself be ratified by the Congress before it can become effective. *Id.*, section 5. This is but one more example of the supervision which Congress has consistently exercised over territorial judiciaries in order to ensure territorial litigants the continuing constitutionally protected right to appellate review in Article III courts as their own local judiciaries develop. It seems clear that the 81st Congress could not have intended to deprive the citizens of Guam of this right by permitting Guam to bar Article III review to virtually all of its litigants except

those who are lucky enough to be plaintiffs under federal question jurisdiction in the District Court.

Petitioners concede that their interpretation of section 22 and the validity of Guam's Court Reorganization Act create a "void" in the territorial scheme that Congress would have to fill with subsequent legislation. Petitioners' Brief at 16. Respondent submits that such an interpretation of a congressional enactment is impermissible when an alternative interpretation itself fills the "void." It should not be assumed that Congress knowingly left a gap in the statutory scheme and left the problem of Article III review to be resolved by subsequent legislation.

Respondent's interpretation of section 22 does not create any such "void." Nor does it present the constitutional problems inherent in Petitioners' position. It is a recognized tenent of statutory construction that statutes should be interpreted to avoid constitutionally questionable results. *See, e.g., United States* v. *Rumely,* 345 U.S. 41, 45 (1953); *Cromwell* v. *Benson,* 285 U.S. 22, 62 (1932). This Court should not read section 22 of the Organic Act to permit the establishment of insulated local appellate courts in the absence of a clear expression of such a congressional intent in the language of the statute or in its legislative history. *See, e.g., Ozawa* v. *United States,* 260 U.S. 178, 194 (1922). Respondent's interpretation of section 22 poses none of these dangers or voids, but rather is consistent with the overall theme of the territorial scheme, and with the rights of United States citizens generally to have access to judicial review by a court of the United States established under Article III of the United States Constitution.

Conclusion

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be affirmed.

February, 1977

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FOR ARGUMENT

Supreme Court, U. S.
FILED
MAR 23 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-439

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS THE PEOPLE OF THE TERRITORY OF GUAM

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In the Supreme Court
OF THE
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OCTOBER TERM, 1976

No. 76-439

THE PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS THE PEOPLE OF THE TERRITORY OF GUAM

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Organic Act of Guam Section 22 (48 USC §1424), using acceptable rules of statutory interpretation and legislative intent (where ascertainable) gives to the Territory of Guam sufficient powers of self-government so as to permit its legislature to create an Appellate Court separate from the Appellate Division of the District Court of Guam to which all appeals from the Superior Court of Guam, also cre-

ated by the Legislature of Guam, are to be directed, to the exclusion of the Appellate Division of the District Court of Guam as a court in the appeals chain for local cases heard in local courts.

STATEMENT OF THE CASE

We refer to the statement of the case made in Petitioners' brief, pages 6-7.

ARGUMENT

I

CONGRESS, CONTRARY TO RESPONDENT'S ASSERTIONS, PROVIDED FOR POWER IN THE GUAM LEGISLATURE TO CREATE ITS OWN COURT SYSTEM.

It is respondent's basic contention that the wording of Section 22 of the Organic Act of Guam (48 USC 1424) is inadequate to allow Guam to undertake a reorganization of the local judicial system which creates an Appellate Court with jurisdiction as to local non-federal questions and removes such appellate jurisdiction from the District Court of Guam. Yet, the contrary conclusion is indicated by plain language in the first sentence of the first section of the Organic Act's Judiciary article. It is clearly stated in the initial sentence of section 22 that the judicial authority of Guam shall reside in, ". . . the District Court of Guam *and* in such court or courts as may have been or may hereafter be established by the laws of Guam."

(emphasis added) Thus, the judicial power in Guam is placed in both the District Court of Guam and in courts established by Guam laws without qualification as to local appellate jurisdiction. The authority given to the Guam legislature is not limited to creating inferior courts. It is evident from this statement that courts created by the laws of Guam are to share with equal dignity the judicial authority of Guam. The placement of such language at the onset of the Judiciary article is significant and acts to set the tenor for the remainder of the article.

Utilizing a Byzantine web of interpretations and inferences Respondent seeks to vary the plain meaning of this key statement. This is incorrect. It is a fundamental principle of statutory interpretation to begin with the presumption that a statute should be granted its literal meaning. When a statute uses plain understandable words the court will not employ addition analytical methods. "It is our judicial function to apply statutes on the basis of what Congress has written, not what Congress might have written." *United States v. Great Northern Railway Co.,* 343 U.S. 562, 575 (1952).

Respondent argues that section 22 does not expressly permit "transfer" of appellate cases from the district court. However, a "transfer" is impossible since the United States Congress never created any appellate jurisdiction within the district court, but permitted the legislature of Guam to determine what, if any, jurisdiction over appeals would lie in the district court.

Respondent's attempt to attribute significance in the instant case to the distinction between the words "transfer" and "determine" fails for a second reason. Section 22, second sentence, third clause, lets the district court "have" such appellate jurisdiction as the "Legislature may determine". Under this clause the legislature can give appellate jurisdiction to the Guam District Court. Since the legislature can give appellate jurisdiction it can also remove it and place it in local courts created by it.

It is the contention of Respondent that subsequent amendments to the Organic Act indicate Congress intended that the appellate power in Guam be vested in the District Court. In 1951 28 USC 1291 was amended to provide that the Ninth Circuit could hear all appeals from the District Court of Guam without regard to the amount in controversy. Then, in 1958 section 22 of the Organic Act was amended by the addition of a paragraph providing that appeals brought in the District Court be heard and determined by an appellate division of three judges.

The amendments do not support the contention that it was the original intent of Congress that the 1950 Organic Act be applied to place the sole appellate power over local courts in the District Court. On the contrary, Congress recognized that it had not adequately anticipated the extent to which Guam would grant appellate jurisdiction to the Appellate Division of the District Court under Public Law 17 of the First Guam Legislature. Congress then reacted as

necessary to service the needs of the systems established by P.L. 17.

Corn v. Guam Coral Company (1963), 318 Fed.2d 622, 627, also cited on page 17 of Petitioner's brief, establishes an accurate picture of the sequence of events and a pattern of Congressional recognition and subsequent reaction which directly contradicts Petitioner's interpretation of original Congressional intent.

> ". . . the appellate division was originally a creation of Guam Public Law 17 of 1951 in response to which section 1291 was amended.
>
> "Thus instead of purporting to create a new appellate body Congress in 1958 was only formalizing the procedural means by which the District Court should exercise its theretofore existing appellate jurisdiction, jurisdiction which antedated the amendment to 28 USC § 1291."
>
> *Corn,* page 627.

The amendments also can not be viewed as a repeal of the power given the Guam Legislature under the Organic Act of 1950 to create an appellate system for the courts of Guam and to determine the jurisdiction of that system. Remaining completely intact is the statutory language which originally enabled the Guam legislature to establish an appellate system:

> ". . . the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam . . . shall have such

appellate jurisdiction as the legislature may determine. The jurisdiction of and the procedure in the courts of Guam other than the District Court of Guam shall be prescribed by the laws of Guam."

48 USC 1424(a).

The 1951 and 1958 amendments, as indicated above, simply provide that the Ninth Circuit can hear all appeals from the District Court of Guam and that when appeals are sent to the District Court of Guam they shall be heard and determined by the appellate division of the court. There is no statutory requirement contained in the above amendments, or elsewhere, that appeals from the courts of Guam must be determined by the District Court should the Guam legislature decide, as it has in P.L. 12-85 to establish another medium for the appellate process. Therefore, any interpretation that the amendments repeal the power granted under the 1950 Organic Act must be based only upon inference. There is nothing in the legislative history of the amendments to indicate affirmatively a Congressional intent to repeal. In fact, quite the opposite Congressional intent was indicated. (See 2 U.S. Code Cong. and Adm. News—'58, pp. 2623-4 and pages 13-14, 17 of Petitioner's Brief). Thus, in the instant case repeal by implication is not justified by the presence of either clear intent or irreconcilable repugnancy. It is a cardinal rule of statutory construction that repeals by implication are not favored. *Lynch v. Household Finance Corporation* (1972), 406 U.S. 911; *United States v. Students*

Challenging Regulatory Agency Procedures (1973), 412 U.S. 669.

The Organic Act, construed as a whole, provides a scaffolding for the government of Guam, setting up an initial framework for the government by permitting the legislature to change that basic framework as the territory develops. This liberal grant of power is provided not only in regard to the Judicial branch, but also for the Executive and Legislative branches. (See Petitioners' brief, pages 31-33).

Congress, recognizing that the courts would develop along with the rest of the government, allowed the Guam legislature to develop and change the court systems as the needs changed. It is submitted that Guam's enactment in 1974 of the Court Reorganization Act (P.L. 12-85) is simply a part of the general historical impetus toward self-government for Guam which was anticipated and permitted by Congress in 1950. Thus, an interpretation that the 1951 and 1958 amendments, cited by respondent, repeal the power granted in 1950 to establish a local appellate system would result in the elimination of a longstanding Government program.

II

AN INTERPRETATION OF THE ORGANIC ACT OF GUAM AS ALLOWING THE ESTABLISHMENT OF THE SUPREME COURT OF GUAM IS CONSISTENT WITH CONGRESSIONAL INTENT AND SUCH A DETERMINATION WOULD NOT OPERATE TO RENDER THAT ACT UNCONSTITUTIONAL.

Respondent, in support of his contention that Guam's establishment of local appellate jurisdiction contradicts the intent of Congress, cites several bills considered by Congress prior to enactment of the Organic Act which, if enacted, would not have allowed the establishment of such local jurisdiction. The United States House of Representatives considered a bill, H.R. 7273, which would have provided Guam with a supreme court from which decisions would be appealable to an Article Three Court. 2 U.S. Code, Cong. Serv. pp. 2840, 2847 (1950). A letter of May 3, 1949 from the Secretary of the Interior to the President of the Senate states, "The judicial branch would consist of a supreme court, with a single justice appointed by the President, with the advice and consent of the Senate for a 6-year term and of such 'inferior' courts as the legislature might create." (Emphasis added). 2 U.S. Code Cong. Serv. p. 2847 (1950).

Respondent indicates that this bill as amended became the Organic Act of Guam and relies upon it for the proposition that Congress intended to restrict Guam to the creation of inferior courts. Yet, when Congress finally passed the Organic Act the provisions relating to a Congressionally created supreme Court were deleted. When S 1892, the companion bill to

H.R. 7273, came before the United States Senate amendments were proposed which gave up the concept of a Congressionally established Supreme Court of Guam. The Senate adopted these amendments and the House of Representatives then concurred in the amendments. 2 U.S. Code Cong. Serv. pp. 2840, 2842 (1950). It is submitted that the refusal to enact the bill properly leads to a conclusion directly contrary to that proposed by Respondent. In other words, it was not the intent of Congress to disallow the creation by Guam of appellate courts and Congress did not intend to retain control over Guam's appellate courts in regard to local non-federal cases.

One third of Respondent's argument (pages 23-34 of Respondent's brief) is devoted to an analysis of the judicial systems created by Congress for other past and present territories of the United States. Respondent attempts to establish a pattern which he contends prevents Guam from creating local appellate courts. However, a comparison of Guam with other territories establishes that Guam's Organic Act is unique and it delegates the broadest powers of any of the territories to the legislature for the creation of appellate courts.

The former territories of Hawaii and Alaska provide a good illustration of this distinction. The judicial power in the Territory of Hawaii was placed in "one supreme court, circuit courts, and in such *inferior* courts as the legislature may from time to time establish." (emphasis added) April 30, 1900, c. 339 §81, 31 Stat. 157; 48 U.S.C. §631 (1952). The

Hawaiian legislature was empowered only to establish inferior courts. Other provisions of the Act of 1900, which were subsequently eliminated upon the admission of the state of Hawaii into the Union, regulated the appointment, tenure, and salaries of the judges on the supreme court. 48 U.S.C. §632-34 (1952). Also, Alaska could not create courts which were independent of those created by Congress. Alaska had no supreme court prior to statehood, the judicial authority being vested in a district court. Act of June 6, 1900, c. 786, §4, 31 Stat. 322; 48 U.S.C. §101 (1952).

The judicial power in the Virgin Islands is placed in a district court and "in such court or courts of *inferior* jurisdiction as may have been or may hereafter be established by local law." (emphasis added) 48 U.S.C. §1611 (1975). There is no ambiguity as to the vesting of appellate jurisdiction. The district court is explicitly given "appellate jurisdiction to review the judgments and orders of the inferior courts." 48 U.S.C. §1612 (1975). See Petitioner's brief, pages 8-15.

Puerto Rico's first organic act provided for a supreme court and the justices were appointed by the President. Act of April 12, 1900, c. 191, §33, 31 Stat. 84. The second organic act established a United States District Court. While the district court did not have appellate jurisdiction over local courts it did have jurisdiction over local matters concerning non-residents. Act of March 2, 1917, c. 145, §41, 39 Stat. 965, as amended; 48 U.S.C. §863 (1952). The Puerto Rico legislature could not change the jurisdiction of

the district court. Act of March 2, 1917, c. 145, §40; 48 U.S.C. §861 (1952).

Guam is readily distinguished from the territories cited by Respondent. In the case of Guam, Congress has neither created a supreme court nor has it acted to regulate any such court which Guam may establish. In contrast, in the instances of Hawaii and Puerto Rico, Congress has regulated the appointment, tenure, and salaries of supreme court justices. In addition, Guam was provided with the power to create a court system and was not restricted to creating "inferior courts". This differs with the limitations imposed upon the Virgin Islands and Hawaii. Finally, Guam was explicitly provided with the power to create the district court's appellate jurisdiction over local courts in regard to local non-federal cases. No other territory was granted such power. It is submitted, therefore, that if Congress had intended to bar the creation of appellate courts or to prohibit the transferring of appellate jurisdiction from the district court, Congress would have clearly so stated or would have patterned Guam after the other territories.

Respondent contends that an interpretation of Section 22 of the Organic Act as allowing the Guam legislature to create an appellate system for local non-federal questions would render that act unconstitutional. The Court Reorganization Act, P.L. 12-85, does not provide a procedure for review or appeal of Guam appellate court decisions to an Article Three Court. Yet, even prior to the establishment in 1974 of the Guam Supreme Court, the Guam Legislature

had the power under Section 22 of the Organic Act, second sentence, third clause, to "determine" the extent of appellate jurisdiction by the district court over Guam inferior courts. Therefore, before 1974 the right to appeal to an Article Three Court could be extinguished by the Guam Legislature. In addition, it is firmly settled that a right of appellate review is statutory, did not exist at common law, and is not required by the United States Constitution. "It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all." *Griffin v. Illinois* (1955), 351 U.S. 12, 18, 76 S.Ct. 585, 590. Moreover, if a gap in appellate review needs to be filled Congress can always so provide. In fact, Congress undoubtedly will *react* upon a final resolution of this case as soon as it knows precisely how existing law is interpreted and what the void is that it must fill. Until that time, Congress cannot know the manner in which it must fill the hiatus in the relationship between the local courts and the United States Court System. It is not the position of Petitioners to advocate a total separation of Guam's local courts from the Article III Courts of the United States. See Petitioner's brief, page 16.

Petitioners concur with the position of the *Agana Bay* majority, which view was also adopted by the *Olsen* dissent.

> "We believe that the policy of leaving local matters to courts created by local legislatures is a sound one. Twenty-five years [now twenty-six years] have passed since Guam was an 'underdeveloped and isolated possession of the United

States' as described by the district court. There is nothing to indicate that Guam is incapable of establishing and operating its own appellate court with respect to purely local matters. There is nothing in the language or legislative history of the Organic Act requiring the interpretation that the district court must be the highest and only appellate court in Guam. Rather, the only language pertaining to appellate courts grants the Guam Legislature total authority to transfer appellate jurisdiction over local, non-federal cases from the district court to Guam courts."

Agana Bay Development Company v. Supreme Court of Guam (9th Cir. 1976), 529 F.2d 952, 958.

III

CONTRARY TO ASSERTIONS OF AMICUS, PUBLIC LAW 94-584, TO PROVIDE FOR THE ESTABLISHMENT OF CONSTITUTIONS FOR THE VIRGIN ISLANDS AND GUAM, DOES NOT SHOW CONGRESSIONAL INTENT RELATIVE TO THE ORIGINAL ORGANIC ACT.

The *Amicus,* Guam Bar Association, asserts that the Guam ConCon Act (*Amicus'* Brief, page 3), requires that Guam follow the pattern established by the Organic Act of the Virgin Islands. This cannot be, since this would place subsections 2(b)(6) and 2(b)(7) in absolute conflict. If Guam is to follow the revised Organic Act of the Virgin Islands, then there is no necessity for any further determination of the relationship between the local courts of Guam and the federal judicial system, because the revised

Organic Act of the Virgin Islands already provides for such relationship. Further, Guam's courts have never followed the pattern established for the Virgin Islands, and there is no reason to expect they should now do so as this would be a step backwards, even assuming the Court Reorganization Act here in question had never been passed.

The purpose for subsection 2(b)(7) is stated in the following message from Congressman Won Pat to the Attorney General. This was requested since the legislative history of the Guam ConCon Act is entirely silent as to Guam. The published reports concern only the Virgin Islands, as the Guam portion of the bill was merged into the Virgin Islands bill apparently on the floor of the Senate after all hearings had been completed. This message states:

"Date: December 13, 1976

From Mr. Won Pat: for Charles Troutman
Re: PL 94-584, Sec. 2(b)(7),

Provide for the establishment of a system of local courts the provisions of which shall become effective no sooner than upon the enactment of legislation regulating the relationship between the local courts of Guam with the Federal judicial system. There is no written record explaining the inclusion of this subsection other than that it first appeared in the Senate version of the House passed measure. According to the attorney in the Senate Territories Subcom. who drafted the language, then Sec. 2(b)(6) of H.R. 9491, the subsection was added at the oral suggestion of Herman Marcuse of the Dept. of Justice, who had drafted the recommendation of the Dept. of

Justice on the Guam Supreme Court bill, H.R. 4580, and with whom my office had been in contact occasionally so that Marcuse was aware of the *Agana Bay & Olsen* decisions. Marcuse suggested to the attorney, James Bierne, that the House passed version implied that the local court system as described in the Guam constitution would be effective upon final ratification of the constitution, but that the local system would fail any constitutional test similar to *Olsen* unless it were made clear in the concon bill that the Congress was aware that legislation establishing review of the decisions of the highest local court by an Article III court would have to be enacted sometime prior to the final ratification of the Guam constitution or else the local court system could not be implemented. Bierne thought that such federal legislation could either be by a Guam Supreme Court bill, such as H.R. 4580 (amended as necessary) or by means of language in any joint resolution dealing with the Guam constitution draft. Bierne suggested that it was his feeling that some action would be necessary at the time the constitution draft came to the Congress in order to repeal all sections of the Organic Act dealing with local government (both consistent and inconsistent sections), in order that litigation raising questions of interpretation of the Guam Constitution would have to come up through the local court system (based on the Guam Constitution) rather than through the Federal court system (based on a parallel or conflicting Federal statute)."

As can be seen, the purpose of subsection 2(b)(7) was not a reflection on the original Organic Act, nor

on the Court Reorganization Act of 1974 (Guam Public Law 12-85), but a reaction to the Ninth Circuit decision in this case.

Therefore, this Guam ConCon Act should not be considered by this court in this case.

IV

HEARINGS ON THE ORIGINAL ORGANIC ACT HELD IN GUAM IN 1949 SHOW THAT, WHILE NO CONSENSUS ON THE COURT SYSTEMS EXISTED, DEFINITE OBJECTIONS TO THE ORIGINAL PROPOSALS WERE GIVEN.

Judge Fischer, then Judge of the Superior Court (a post created by executive action of the Governor and supported by the advisory Guam congress and which handled all United States questions before 1950) proposed, at hearings held in Guam by the House Subcommittee on Public Lands, on the 22nd of November, 1949, that appellate rights from local courts go to the Ninth Circuit directly and thence to the United States Supreme Court. At the end of Judge Fischer's lengthy statement, Representative Lemke responded by suggesting a rewrite of H.R. 4499 (one of the original Organic Act bills) so that a supreme court with inferior courts created by the Guam Congress would hear all local questions. The decision of the Supreme Court of Guam would be final as to local issues. Federal issues would be decided by some federal district court organization. [Original transcript of "Second Day of Public Hear-

ing" by the House Subcommittee on Public Lands, Agana, Guam, Tuesday, November 22, 1949; pages 73 through 78. Obtained from mimeograph of original transcript held by Msgr. Calvo of Agana, Guam. Official citation unavailable at this time.]

Neither proposal was eventually accepted by Congress. Rather, Congress adopted section 22 of the Organic Act, which established a District Court of Guam having exclusive federal jurisdiction and such local jurisdiction as would be determined locally, until a local court system could be established according to the wishes of the people of Guam.

CONCLUSION

The arguments of *Amicus* and Respondent do not coincide with the actual facts of the situation. Congress deliberately failed to pass the initial proposals for a Guam Organic Act. Likewise, the Guam ConCon Act was adopted in reaction to this case as decided by the Ninth Circuit Court. Other acts of Congress relative to the Guam Judiciary have all been taken in reaction to local needs.

Therefore, it can be seen that the legislative intent in the original Organic Act, if any such intent can be found, was to give Guam the maximum flexibility in determining its own court system, which system would have equal dignity with that of the District Court of Guam in *all* local matters.

Petitioners urge that this Court reverse the opinion of the Ninth Circuit Court of Appeals in the instant case.

Dated, Agana, Guam,
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Supreme Court, U. S.
FILED
FEB 19 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court
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United States

OCTOBER TERM, 1976

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Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE GUAM BAR ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-439

PEOPLE OF THE TERRITORY OF GUAM,
Petitioners,

vs.

EDMUND J. OLSEN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE GUAM BAR ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

STATUTES PRESENTED

In addition to Section 22 of the Organic Act of Guam, as amended, (48 U.S.C. §1424), the Guam and Virgin Islands Constitutional Convention Act, 90 Stat. 2899 (Public Law 94-584), October 21, 1976, is involved and is set forth in the appendix to this brief (hereinafter "Con Con Act").

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Congress authorized the Territory of Guam in the Organic Act of Guam, as originally

passed or subsequently amended, to establish an appellate court separate and distinct from the appellate jurisdiction of the District Court of Guam.

2. Whether the Con Con Act is a clear indication that the Congress of the United States intends to maintain a Guam judicial system that includes a system of local courts with access by appeal to the federal judicial system.

APPEARANCE OF GUAM BAR ASSOCIATION

By consent of the parties hereto, filed concurrently herewith, the Guam Bar Association files this *amicus curiae* brief in support of respondent.

SUMMARY OF ARGUMENT

Neither the original Organic Act of Guam nor any subsequent amendment authorizes Guam to transfer the appellate jurisdiction of the District Court of Guam to a locally created court.

The Con Con Act indicates that Congress desires that there be a continuation of the appeal relationship between the local courts of Guam with the federal judicial system.

ARGUMENT

I

SECTION 22 OF THE ORGANIC ACT OF GUAM, AS AMENDED, AS WELL AS ITS LEGISLATIVE HISTORY, SUPPORT THE HOLDING BELOW THAT THE CONGRESS INTENDED THAT DECISIONS OF GUAM BE SUBJECT TO REVIEW BY THE COURT OF APPEALS FOR THE NINTH CIRCUIT.

Petitioner relies heavily upon the provisions of the judicial system of the Virgin Islands and its legislative history in concluding as it does on page 15 of its brief, " * * * the Congress of the United States intended that the jurisdiction allowed to the courts of Guam be different and greater than that allowed to the courts of the Virgin Islands."

In making this statement, Petitioner has apparently overlooked the Guam Con Con Act, *supra,* which provides in §2(b)(6) and (7) that Guam, should it elect to make a constitution,[1] shall provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands, July 22, 1954, 68 Stat. 506 (48 U.S.C. §§1611-1617) and provide for the establishment of a system of local courts after the enactment of legislation regulating the relationship between the local courts of Guam and the federal judicial system.

That Congress was aware of the en banc decision now at bar is borne out by the committee hearings on H.R. 4580, July 31, 1975, which bill would have amended the Organic Act of Guam to permit or con-

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[1]Guam has enacted local legislation pursuant to the Con Con Act, being Guam Public Law 13-202, December 10, 1976, Thirteenth Guam Legislature, printed in the appendix to this brief.

firm and ratify the Guam Court Reorganization Act. Hearing on H.R. 4580 before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 94th Congress, 1st Session Service 19.

The Guam Bar Association believes the District Court of Guam, in *Agana Bay Development Company (Hong Kong) Ltd. v. Supreme Court of Guam,* 422 F.Supp. 593 at page 605 correctly places the whole question of congressional intent and history in proper perspective:

> "If one accepts respondent's (Petitioner here) argument, then it must necessarily follow that since its inception under the Organic Act, the legislature has had the authority to vest appellate jurisdiction in a court of its own creation, such as the respondent court, determine the appointment processes of the judges of such court, and fix the qualifications of the judges of such court."

The legislative history of the Organic Act of Guam and, in particular, Judge Albert Maris, in his letter of March 14, 1957, addressed to the Honorable Clair Engle, endorses the concept of appellate jurisdiction in the District Court of Guam as confirmed by the 1958 amendment amending §§22 and 24 of the Guam Organic Act, Sen.Rep. No. 1582, 85th Congress, 2d Sess. (1958) 1958 U.S. Code & Administrative News, pp. 2628-30.

Guam Bar submits as to the other points raised by the Petitioner with respect to legislative history and statutory interpretation is amply covered by the opinion of the District Court of Guam in *Agana Bay De-*

velopment Company (Hong Kong) Ltd. v. Supreme Court of Guam, supra, and the reasoning of the en banc court below.

The future judicial system of the Commonwealth of the Northern Marianas is not direct or indirect evidence of the congressional intent in 1950 with respect to Guam's judicial system. The Guam Bar further submits the drafters of the covenant have not done their homework and taken heed of the drafting problem which has given rise to this litigation. The original drafters of Guam's Organic Act could have been more precise and the use of the same language in the covenant may be unfortunate to that government.

Since the United States assumed trustee status with respect to the Northern Marianas Islands, there has been no appeal from the appellate division of the Trust Territory High Court to any federal court, in Guam, Honolulu, or elsewhere. The best one can say is that the Northern Marianas Commonwealth law apparently continues or authorizes the existing situation.

Secondly, by its very definition, commonwealth status implies greater autonomy than does that of an unincorporated territory.

II

PETITIONER IN ITS ARGUMENT VII OVERSTATES THE INDEPENDENCE WHICH HAS BEEN ENTRUSTED TO THE PEOPLE OF GUAM AND ITS GOVERNMENT IN THAT CONGRESS ULTIMATELY RETAINS PLENARY POWER WITH RESPECT TO GUAM.

Petitioner has overbuilt the scaffolding which it asserts has been established as a framework within which the Government of Guam is permitted to operate. Petitioner is incorrect when it states that the legislative power of Guam has no limitations imposed by Congress. (Petitioner's brief, page 32). The Guam Elective Governor Act, Public Law 90-497, §8, 82 Stat. 847, September 11, 1968, provides in part as follows: . . . "All laws enacted by the legislature shall be reported by the Governor to the head of the department or agency designated by the President under Section 1421a of this title. The Congress of the United States reserves the power and authority to annul the same."

Since there exists a right of legislative appeal, it is not difficult to conceive of a Congressional desire to provide a judicial appeal to the federal appellate system, both of which are not antagonistic to the well announced policy of furtherance of self-determination for Guam.

As of the date this brief was mailed to the printer, on February 11, 1977, the Guam Bar was unable to locate any meaningful legislative history concerning the provisions of the Con Con Act with respect to the Guam judicial system. Sections 21, 22 and 23 of subchapter V of the Revised Organic Act of the Virgin Islands, 68 Stat. 506, (48 U.S.C.A.

§§1611, 1612 and 1613), do in fact establish a federal court relationship in the Virgin Islands by providing that the District Court of the Virgin Islands and any local courts shall have exclusive jurisdiction of civil matters involving more than $500 and in criminal cases where the maximum punishment exceeds $100 or imprisonment for more than six months. The district court judges are appointed by the President of the United States with the advice and consent of the Senate.

CONCLUSION

The Guam Bar Association, as amicus curiae herein, respectfully submits that the judgment of the court below be affirmed.

Dated this 16th day of February, 1977.

WALTER S. FERENZ,
Attorney for Guam Bar Association, Amicus Curiae.

P.O. Box BF
Agana, Guam

(Appendix Follows)

APPENDIX

PUBLIC LAW 94-584—94th CONGRESS—
OCT. 21, 1976—90 STAT. 2899

An Act

To provide for the establishment of constitutions for the Virgin Islands and Guam

Oct. 21, 1976
[H.R. 9460]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress, recognizing the basic democratic principle of government by the consent of the governed, authorizes the peoples of the Virgin Islands and of Guam, respectively, to organize governments pursuant to constitutions of their own adoption as provided in this Act.

Virgin Islands and Guam. Constitutions. 48 USC 1391 note.

SEC. 2. (a) The Legislatures of the Virgin Islands and Guam, respectively, are authorized to call constitutional conventions to draft, within the existing territorial-Federal relationship, constitutions for the local self-government of the people of the Virgin Islands and Guam.

48 USC 1391 note.

(b) Such constitutions shall—

(1) recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands and Guam, respectively, and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands and Guam, respectively, including but not limited to, those provisions of the Organic Act and Revised Organic Act of the Virgin Islands

48 USC 1406m, 1541 note.
48 USC 1421 note.

and the Organic Act of Guam which do not relate to local self-government.

(2) provide for a republican form of government, consisting of three branches: executive, legislative, and judicial;

(3) contain a bill of rights;

(4) deal with the subject matter of those provisions of the Revised Organic Act of the Virgin Islands of 1954, as amended, and the Organic Act of Guam, as amended, respectively, which relate to local self-government;

(5) with reference to Guam, provide that the voting franchise may be vested only in residents of Guam who are citizens of the United States;

(6) provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands, as amended; and

(7) provide for the establishment of a system of local courts the provisions of which shall become effective no sooner than upon the enactment of legislation regulating the relationship between the local courts of Guam with the Federal judicial system.

48 USC 1391 note.

SEC. 3. The members of such constitutional conventions shall be chosen as provided by the laws of the Virgin Islands and Guam, respectively (enacted after the date of enactment of this Act): *Provided, however,* That no person shall be eligible to be a member

of the constitutional conventions, unless he is a citizen of the United States and qualified to vote in the Virgin Islands and Guam, respectively.

Proposed constitutions, submittal to governors and President. 48 USC 1391 note.

SEC. 4. The conventions shall submit to the Governor of the Virgin Islands a proposed constitution for the Virgin Islands and to the Governer of Guam a proposed constitution for Guam which shall comply with the requirements set forth in section 2(b) above. Such constitutions shall be submitted to the President of the United States by the Governors of the Virgin Islands and Guam.

Transmittal to Congress. 48 USC 1391 note.

SEC. 5. Within sixty calendar days after the respective date on which he has received each constitution, the President shall transmit such constitution together with his comments to the Congress. The constitution, in each case, shall be deemed to have been approved by the Congress within sixty days after its submission by the President, unless prior to that date the Congress has approved the constitution, or modified or amended it, in whole or in part, by joint resolution. As so approved or modified, the constitutions shall be submitted to the qualified voters of the Virgin Islands and Guam, respectively, for acceptance or rejection through islandwide referendums to be conducted as provided under the laws of the Virgin Islands and Guam, respectively, (enacted after the date of enactment of this Act). Upon approval by not less than a majority of the voters (counting only the affirmative or negative votes) participating in such

Submittal to voters.

referendums, the constitutions shall become effective in accordance with their terms.

Approved October 21, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-507, pt. 2 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 94-1033 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD:

Vol. 121 (1975): Oct. 6, considered and passed House.

Vol. 122 (1976): July 20, considered and passed Senate, amended.

Sept. 22, House concurred in Senate amendment with an amendment.

Oct. 1, Senate agreed to House amendment.

Thirteenth Guam Legislature
1976 Second) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 978, "An Act to repeal and reenact Chapter III of Title XVI of the Government Code to call a Constitutional Convention and to make an appropriation for such convention and for other purposes", was on the 2nd day of December, 1976, duly and regularly passed.

/s/ Joseph F. Ada
Joseph F. Ada
Speaker

Attested:

/s/ Frank F. Blas
Frank F. Blas
Acting Legislative Secretary

This Act was received by the Governor this 6th day of December, 1976, at 2:45 o'clock P.M.

/s/ Helen P. Alvarez
for Ruth F. Won Pat
Assistant Staff Officer
Governor's Office

Approved:

/s/ Ricardo J. Bordallo
Ricardo J. Bordallo
Governor of Guam

Dated: December 10, 1976
11:54 A.M.

P.L. 13-202

Thirteenth Guam Legislature
1976 (Second) Regular Session

Bill No. 978
Substituted by
Committee on Rules

Introduced by

F. F. Blas
J. F. Ada
T. V. C. Tanaka
E. R. Duenas
B. M. Palomo
C. T. C. Gutierrez
A. C. Sanchez
F. R. Santos
B. D. Ada
C. C. Barrett
E. M. Espaldon
J. M. Rivera
G. R. Salas
J. H. Underwood
A. C. Ysrael
E. T. Charfauros
A. L. Cristobal
J. R. Duenas
R. P. Duenas
A. A. Sekt
R. F. Taitano

AN ACT TO REPEAL AND REENACT CHAPTER III OF TITLE XVI OF THE GOVERNMENT CODE TO CALL A CONSTITUTIONAL CONVENTION AND TO MAKE AN APPROPRIATION FOR SUCH CONVENTION AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Chapter III of Title XVI of the Government Code is repealed and reenacted to read:

"CHAPTER III

Constitutional Convention

Section 15200. Statement of Legislative Intent. The fundamental right of the people to

draft and approve a constitution for the territory of Guam having been recognized by the Congress and the President of the United States by the enactment of Public Law 94-584, the Legislature expresses its intent to establish a Constitutional Convention, determine the method of selecting delegates, and appropriate necessary funds, for the purpose of drafting a Guam Constitution setting forth the fundamental principles that determine the powers and duties of the government and guarantee certain rights, privileges and immunities to the people. The Constitution which shall deal with those provisions of the Organic Act of Guam which relate to local self-government, shall provide for a republican form of government, a bill of rights, a system of courts, shall recognize and be consistent with the sovereignty of the United States over Guam and the supremacy of the provisions of the Constitution, treaties and laws of the United States applicable to Guam.

Section 15200.1. Constitutional Convention, calling of. A Constitutional Convention representing the people of Guam is called to convene May 4, 1977. When assembled the Convention shall have the powers and duties set forth in this Chapter.

Section 15200.2. Delegates to Convention, qualifications for and number of. (a) The Convention shall be composed of delegates elected from each municipal district of Guam as such districts are set out in Chapter I of Title XVI of the Government Code. No person shall be elected to nor seated as a member of the Convention unless he shall be:

1. A Citizen of the United States.

2. Qualified to vote on Guam.

3. A resident of the municipal district from which he has been elected for not less than thirty (30) days immediately preceding the date of his election.

(b) Each municipal district shall be entitled to one delegate for each 750 registered voters residing within a district, provided, however, that regardless of the number of registered voters each district shall have at least one delegate. It shall be the duty of the Election Commission to determine the number of delegates to be elected from each district. If after dividing the number of registered voters by 750 there is a remainder of 375 or more that district shall be accorded one additional delegate to the Convention.

Section 15200.3. Same, election of. (a) The Election Commission shall conduct a general election April 16, 1977, at which the voters of each municipal district shall elect delegates to the Convention. The Election Code and regulations promulgated thereunder shall apply with the following exceptions.

1. The election shall be non-partisan. (No political party directly or indirectly shall sponsor, nominate or endorse any of the candidates for the general election or delegates established by this Chapter).

2. No primary election shall be conducted.

Section 15200.4. Delegate, candidacy for. (a) No person shall be listed upon the ballot as a candidate for election as a delegate to the Convention nor certified by the Election Commission

as having been elected unless not later than March 19, 1977:

1. The person desiring to be a candidate shall file with the Election Commission a sworn affidavit stating that:

i. He is a citizen of the United States.

ii. Upon election day that he shall have been a resident of the district for which he seeks election for not less than thirty (30) days.

iii. He seeks election as a delegate to the Convention.

2. A person desiring to be a candidate shall file with the Election Commission a petition for his candidacy signed by not less than 50 nor more than 150 registered voters of the municipal district from which he seeks to be elected a delegate.

Section 15200.5. Voters, registration of. The Election Commission shall register votes for the election of April 16 through February 28, 1977, provided however, that those persons who voted on November 2, 1976 need not re-register. In order to facilitate the registration of voters the Election Commission is authorized and encouraged to accept the assistance of volunteer clerks who may register voters at schools, shopping centers, retail stores, and other places where the public may gather.

Section 15200.6. Delegate seats, apportionment of. No later than March 3, 1977, the Election Commission shall determine and announce the number of delegates to be elected from each municipal district. Its apportionment shall be based

upon the number of persons registered as voters as of February 28, 1977.

Section 15200.7. Results, declaration of. Immediately after the tabulation of the election returns for the election of April 16, 1977, the Election Commission shall determine the persons who have been elected to office and announce those results. After announcing the results of the election the Election Commission shall cause to be prepared a certificate of election for each delegate elected and shall cause to be delivered to the hands of each person elected a delegate the original of such certificate which shall be evidence of that person's right to attend and participate in the deliberations of the Convention.

Section 15200.8. Organizational meeting. The Speaker of the Guam Legislature, acting as a temporary presiding officer, shall convene the organizational meeting of the Convention at 10:00 a.m., May 4, 1977, in the Session Hall of the Guam Legislature. The presiding judge of the Superior Court, after receiving and verifying each person's certificate of election as a delegate, shall administer the oath of office to the delegates. Immediately after the taking of their oath the delegates shall proceed to organize by:

(a) Electing a presiding officer, who shall be the President of the Convention.

(b) Adopting rules of order governing the procedure of the Convention.

Immediately after the election of a presiding officer, that person shall assume the chair of the Convention. The Convention may meet for not more than five (5) days, which days need not be

consecutive, in May for organizational purposes. Thereafter the Convention shall recess until July 1, 1977, when it shall reconvene for its regular deliberations.

Section 15200.9. Duty of delegates. It shall be the duty of the delegates to the Convention to draft a Constitution for the people of Guam pursuant to the provisions of U. S. Public Law 94-584.

Section 15200.10. Convention, duration of. Not including the organizational meetings of the Convention, the Convention shall meet for not more than 120 sessions days, and in no event shall the Convention continue beyond October 31, 1977, provided, however, the Convention may reserve three (3) session days to occur between December 1 and December 15, 1977, to adopt its final report. Further provided that the President of the Convention may call a special session of the Convention within sixty (60) days after the proposed Constitution as so approved and modified by Congress is returned to Guam so that the delegates may formally comment on any amendments by Congress in advance of the referendum.

Section 15200.11. Report, transmission of. The Convention shall submit to the Governor, a proposed Constitution for Guam on or before December 31, 1977 which shall comply with the requirements set forth in Section 15200.9.

Section 15200.12. Convention, employees of. The Convention shall have the power to employ its own staff without conformity to the Civil Service system of the government. It may engage consultants to assist it in its studies and in the

preparation of its report. The Executive and Judicial branches are authorized to permit employees to be temporarily assigned to duties with the Convention, provided, however, the Convention shall reimburse the appropriate agency the cost of such as employee's service.

Section 15200.13. Vacancies, filing of. In the event a vacancy shall occur among the delegates during the course of the Convention, the Convention shall formally notify the Election Commission of this fact. The Election Commission shall then refer to the results of the April 16 election and certify as a replacement delegate the person who finished next highest in the district in which the vacancy occurred. In the event there was no person finishing lower in the election results, then the Commissioner of the district in which the vacancy occured shall nominate three (3) qualified persons from that district and the Convention shall by a plurality of the affirmative votes cast elect one of such persons to fill the vacancy.

Section 15200.14. Referendum. The proposed Constitution as so approved or modified by the Congress shall be submitted to the qualified voters of Guam for acceptance or rejection through an islandwide referendum to be held within ninety (90) days after Congress returns the proposed Constitution on the date the Legislature shall determine by resolution.

Section 15200.15. Rules and Regulations. The Election Commission shall promulgate the necessary rules and regulations to conduct the referendum and implement its purpose.

Upon the approval by not less than a majority of the voters (counting only the affirmative or

negative votes) participating in such referendum, the Constitution shall become effective in accordance with its terms."

Section 2. The sum of Two Hundred Fifty Thousand Dollars ($250,000) is appropriated from any available funds in the Unappropriated Surplus of the General Fund to the Constitutional Convention for the operation of the Convention created by this Act.

Section 3. The appropriation made by Section 2 of this Act shall be administered and authorized to be expended solely by the Constitutional Convention in accordance with its rules or by-laws. Notwithstanding any other provision of the law, the Certifying Officer shall be designated by the President of the Convention.

Section 4. The sum of Seventy-Six Thousand Dollars ($76,000) is appropriated from any available funds in the Unappropriated Surplus of the General Fund to the Election Commission for the purpose of conducting the election for delegates to the Convention and for the purpose of conducting the referendum.

The Election Commission shall expend no more than Thirty-Eight Thousand Dollars ($38,000) of this sum for each of these tasks.

Section 5. Not later than ninety (90) days of the effective date of this Act, the Governor of Guam, shall transmit a copy of this Act to the Secretary of State for transmittal to the United Nations.